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 INTEGRITY AUTOMATED SOLUTIONS

UNITED STATES FEDERAL DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARK FULTON, dba as
 INTEGRITY AUTOMATED
 SOLUTIONS,

Plaintiff,

vs.

KEITH VOYSEY, Chief
 Technology Officer, GENE
 ENERGY PARTNERS, INC., a
 California Corporation, ,
 DAVID BALKIN, position
 unknown, CHRIS TAYLOR,
 position unknown, and DOES 1
 through 50, inclusive,

Defendants

Case No.: 8:15-cv-00978-CJC-AGR

**SECOND AMENDED COMPLAINT FOR
 DAMAGES AND DECLARATORY JUDGMENT
 OF PATENT INVALIDITY AND
 UNENFORCEABILITY**

1. **CONVERSION;**
2. **TRESPASS TO CHATTELS;**
3. **IMPLIED CONTRACT AND QUANTUM
MERUIT**
4. **INTENTIONAL
MISREPRESENTATION;**
5. **FRAUDULENT
MISREPRESENTATION;**
6. **INTENTIONAL INTERFERENCE WITH
ECONOMIC RELATIONSHIPS;**
7. **NEGLIGENT INTERFERENCE WITH
ECONOMIC RELATIONSHIPS;**
8. **TRADE LIBEL;**
9. **UNFAIR COMPETITION California**
10. **Business & Professions Code § 17200.**
11. **BUSINESS DEFAMATION**
12. **DECLARATORY RELIEF OF PATENT
INVALIDITY (Counts 11 through 17)**

DEMAND FOR A JURY TRIAL

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Plaintiff MARK FULTON, dba INTEGRITY AUTOMATED SOLUTIONS [FULTON] brings this SECOND AMENDED COMPLAINT [SAC] for a determination of patent invalidity, California State Law claims, and further relief for declaratory judgment of patent invalidity and unenforceability against KEITH VOYSEY [VOYSEY], Chief Technology Officer of Genea Energy Partners, Inc., Genea Entergy Partners, Inc. [GENEA or Genea], a California Corporation, DAVID BALKIN [BALKIN], position unknown, and CHRIS TAYLOR [TAYLOR], position unknown.

This SAC contains facts and law not considered in Plaintiff's first federal actions, as presented and discussed below. Plaintiff alleges the following based on information and belief:

I. JURISDICTION AND VENUE

A. Federal Question Jurisdiction Under 35 U.S.C. § 1 *et seq.*

1) The subject of this action is GENEА's patent, United States Patent No. 7,774,245 ['245 Patent].

2) This is an action for declaratory judgment of invalidity and non-infringement by Plaintiff FULTON of the claims of GENEА's '245 Patent arising under the United States Patent Laws, 35 U.S.C. § 1 *et seq.*

3) Federal Question jurisdiction is proper in this civil action because FULTON's claims of patent invalidity arise under the Patent Laws of the United States, 28 U.S.C. §1338(a) and the **America Invents Act [AIA]**, Pub. L. No. 112-29.

4) This civil action also invokes the **Declaratory Judgment Act**, 28 U.S.C. §§ 2201 & 2202 to seek a declaration of non-infringement by the FULTON on any of Genea's intellectual property including, but not limited to, other patents, trademarks, copyrights and trade secrets.

5) There is an actual controversy between FULTON and GENEА relating to GENEА's '245 Patent and its intellectual property, in that GENEА threatened legal action against FULTON for infringement of GENEА's '245 Patent and other intellectual property

[GENEA's IP or IP] through the WEBSMARTAIR technology platform [WSA]. Although GENE A issued a covenant to not sue FULTON for infringement of the '245 Patent for present versions of WSA, nonetheless, FULTON thereafter continued to suffer irreparable harm to his business and continues to suffer such harm after GENE A refused to withdraw its C&D Letter.

6) FULTON maintains that as a direct and proximate results of GENE A's failure to either explain its allegations of infringement or withdraw its C&D Letter, he suffered and continues to suffer irreparable harm to his business based on WSA, whereas GENE A asserts that its mere covenant to not sue FULTON for infringing on its '245 Patent absolves it of responsibility for sending a cease and desist letter [C&D Letter] without performing or providing an adequate claims infringement analysis.

7) This Federal Court has exclusive original subject jurisdiction over Plaintiff's claims of patent invalidity and unenforceability pursuant to federal question jurisdiction, 28 U.S.C. §§ 1331, 1338(a), the Declaratory Judgment Act, 28 U.S.C. § 2201-02, and the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

B. Supplement Federal Jurisdiction Under 28 U.S.C. § 1367.

8) This Federal Court has supplement jurisdiction over Plaintiff's California State law claims pursuant to 28 U.S.C. § 1367 because said claims are so related to claims of patent ineligibility, invalidity, and unenforceability that they form part of the same case or controversy under Article III of the United States Constitution.

9) California State courts cannot exercise any "jurisdiction over any claim for relief arising from any Act of Congress relating to patents, plant variety protection, or copyrights." 28 U.S.C. §1338(a).

C. Personal Jurisdiction.

10) This court has personal jurisdiction over Defendants VOYSEY, BALKIN, TAYLOR, and GENE A because each Defendant resides in or does business or has minimal contacts with this Judicial District.

D. Venue.

11) Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) & (c) because Defendants VOYSEY, BALKIN, TAYLOR, and GENE A reside, do business or have their principle place of business in this Judicial District.

II. INTRODUCTION: PATENTEES MUST CONDUCT AN ADEQUATE CLAIMS INFRINGEMENT ANALYSIS, AND MUST ALSO INCLUDE A DESCRIPTION OF INFRINGING CONDUCT, BEFORE SENDING A CEASE AND DESIST LETTER TO SUSPECTED INFRINGERS.

12) The principles at stake in this litigation implicate how a patentee should deal with a suspected infringer. Since GENE A failed to include any description of any infringing activity in its cease and desist letter [C&D Letter] to Plaintiff, GENE A exhibited bad faith. And because even a good faith belief in the invalidity of a patent is not a defense against willful infringement, FULTON had to act by conducting his own investigation of infringement. So FULTON inquired of GENE A about the basis of its allegations of infringement. Under the circumstances, clearly FULTON could not merely deny infringement. So that GENE A ultimate refusals and failures to provide any form of a claims infringement analysis demonstrates both objective and subjective bad faith.

13) Basically, GENE A either did not conduct a claims infringement analysis or it performed an inadequate one before sending its C&D Letter. In either case, it already had sufficient information to know whether WSA infringed on the '245 Patent through two inspections, *i.e.* a secret inspection conducted in 2008 [SECRET INSPECTION] and an internet inspection [INTERNET INSPECTION] conducted around 2010. In addition, all of the information needed to learn the functionality and workings of the WSA technology were freely available on the WEB (currently www.matter-systems.com). Based on what GENE A knew or should have known from its prior inspections and the information freely available from the Internet, GENE A could not have had a reasonable basis for believing that it could prevail in any patent infringement lawsuit.

1 14) What patentees should not do, as GENE A did, is send a cease and desist letter without
2 comparing the claims of the patent, *i.e.* the '245 Patent, along with the functionality and
3 features of the suspected infringing product, *i.e.* WSA. The absence of such a comparison in
4 the C&D Letter indicates that GENE A did not have sufficient infringement information to
5 provide details of infringement. The cause of not having sufficient infringement information
6 was failing to perform an adequate claims infringement analysis. A reasonable jury could
7 conclude that GENE A's ultimate failure to provide any form of claims infringement analysis
8 demonstrates a lack of good faith and informed comparison of the claims of the '245 Patent
9 and the features of the WSA technology. A reasonable jury could also conclude that GENE A
10 filed to perform reasonable preparation, and that this lack of preparation gave no reasonably
11 objective assurance to GENE A that it could prevail in any infringement lawsuit.

12 15) Nor should patentees send a C&D Letter threatening litigation if it has no intent to sue
13 for infringement. Based on the facts that GENE A failed to assert claims for infringement at
14 least twice when it had the opportunity to do so, a reasonable jury could conclude that
15 GENE A never intended to sue for infringement. Sending a letter threatening litigation with
16 no intention of following through could be construed by a reasonable fact finder as a lack of
17 good faith in sending the letter.

18 16) Probably expecting compliance with its demands to stop using and developing WSA
19 technology, and instead facing litigation against a non-compliant competitor who refused to
20 acquiesce to GENE A's unilateral demands, GENE A then demanded an inspection of WSA
21 through discovery. However, since GENE A never before requested an inspection of WSA
22 before, even during extensive pre-litigation negotiations, a reasonable jury could conclude
23 that GENE A had all of the information it believed necessary to allege infringement and that
24 its inspection request was just a sham to cover up its failure to perform a claims infringement
25 analysis.

26 17) In the end, there is no evidence that GENE A ever compared the claims of the '245
27 Patent and the features of WSA technology, even after its third inspection of WSA during
28

1 discovery in the First Federal Action. In addition, the lack of any description of any
2 infringing conduct by WSA in the C&D Letter is adequate evidence to infer that GENE
3 conducted no pre-letter investigation comparing the claims of the '245 Patent with WSA
4 technology. There is little or no evidence that a reasonably qualified software engineer
5 evaluated a comparison of the claims in the '245 Patent with the functionality of the WSA
6 technology. GENE claims that it performed a careful investigation and analysis, but there is
7 little or no evidence that its patent counsel did so. A reasonable jury could conclude that
8 GENE's failures to produce any claims infringement analysis conducted before sending its
9 C&D Letter was the result of bad faith.

10 18) And from GENE's refusals and failures to provide any claims infringement analysis
11 during litigation, a reasonable jury could conclude that none was performed before sending its
12 letter and that GENE sent its C&D Letter maliciously.

13 19) During prior litigation, GENE was faced with a golden opportunity to sue for
14 infringement on its '245 Patent--but curiously, it did not. Instead of withdrawing its C&D
15 Letter when FULTON noted to John Guist, GENE's then patent counsel, that WSA could
16 not possibly infringe on GENE's '245 Patent since WSA did not use metered energy usage
17 data, GENE stubbornly refused to reconsider its allegations of infringement. Incorrectly,
18 GENE stated that it was FULTON's burden of proof to prove non-infringement, whereas as
19 a matter of law the patentee always bears the burden of proving infringement. The burden of
20 proof does not shift from the defendant patentee in an action for declaratory relief. A
21 reasonable inference could be made by a jury that such obstinance constitutes abuse of
22 process and subject bad faith.

23 20) In its original answer in the FIRST FEDERAL ACTION, GENE refused or failed to
24 allege any counter-claims that WSA infringed on its '245 Patent, which under the **Federal**
25 **Rules of Civil Procedure** are compulsory and waived if not made then. From this first
26 reluctance to assert claims of infringement, a reasonable jury could conclude that GENE
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1 never intended to sue for infringement and that its threats of litigation in the C&D Letter were
2 mere bad faith imitations of overbearing intimidation.

3 21) Subsequently, GENE A had a second chance to assert claims of infringement, but
4 again it decided not to. In the prior litigation, GENE A obtained leave from the court to file an
5 amended answer in order to assert counter-claims for infringement on the '245 Patent. By this
6 time, FULTON had expended much energy in seeking information on infringement from
7 GENE A, to no avail. By then he had also spent considerable resources on litigation to
8 somehow resolve GENE A's unsubstantiated claims of infringement. But then, in the event,
9 GENE A decided to not file any amended answer at all, thus causing much waste of
10 FULTON's efforts and resources. From this second failure to assert claims of infringement, a
11 reasonable jury could conclude that GENE A never, ever intended to sue FULTON for patent
12 infringement and that GENE A's threats of litigation in its C&D Letter were maliciously
13 motivated in bad faith.

14 22) Instead of counter-claiming for infringement, which would have forced GENE A to
15 eventually produce a claims infringement analysis and engage in discovery which in all
16 probability would have revealed that it conducted none before sending its C&D Letter,
17 GENE A issued a covenant to not sue in order to avoid a determination that its '245 Patent was
18 invalid and unenforceable. While GENE A could argue that it issued this covenant in order to
19 avoid further litigation, a reasonable jury could instead conclude that GENE A had waited
20 until the very last minute to make its promise merely in order to cause the most financial
21 hardship and business turmoil on FULTON.

22 23) But there are yet other reasons that motivated GENE A to terminate the prior litigation
23 without any review on the merits, *i.e.* to obscure its own inequitable conduct and avoid a
24 determination of the invalidity of the '245 Patent on the merits. While GENE A could argue
25 that it did not have sufficient information to actually allege infringement its original answer
26 and that it therefore needed to inspect WSA before doing so, the evidence of its prior
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1 inspections of WSA indicates that it did have sufficient information, or so a reasonable jury
2 could so conclude.

3 24) And the fact that GENE A did not cite WSA as prior art in its application for the '245
4 Patent could be construed by a reasonable jury as an inequitable attempt by GENE A to hide
5 the WSA technology, which renders the claims of GENE A's '245 Patent obvious, from the
6 United States Patent and Trademark Office [USPTO]. Factual and legal research subsequent
7 to the First Federal Action has revealed facts and circumstances that merit a determination of
8 the validity of the '245 Patent on its merits.

9 25) Due to GENE A's refusal to provide a claims infringement analysis to FULTON,
10 FULTON has been forced to shut down his business based on WSA. But FULTON cannot
11 just wait things out because of the overhanging threat of ruinous liability for willful
12 infringement, especially since even a good faith belief in the invalidity of a patent is no
13 defense to willful infringement. So FULTON asks GENE A to explain their allegations of
14 infringement and wrongful impact on GENE A's IP. GENE A does not respond and refuses to
15 provide any information regarding alleged infringement. A reasonable jury could conclude
16 that GENE A suppressed infringement information in bad faith.

17 26) GENE A then misleads FULTON by promising to provide a claims infringement
18 analysis, but then fails to produce any. A reasonable jury could infer from this that GENE A
19 had fraudulent intent by promising to produce, but then failing to deliver, information on
20 infringement.

21 27) FULTON had developed a business managing energy consumption in commercial
22 buildings using the WSA technology platform. But now FULTON cannot use the WSA
23 platform because of the lingering effects of GENE A's C&D Letter which made false and
24 unsubstantiated allegations of infringement on the '245 Patent and wrongful impact on
25 GENE A's IP.

26 28) FULTON's customers reasonably decided to not buy into litigation. GENE A's
27 actions are the epitome of what a patent troll does, which is merely collect patents and
28

royalties without actually making anything or developing any legitimate business. In fact, GENE A does not appear to be even using the invention described in the claims of its ‘245 Patent at all. At least, from the removal of all discussion of patents from its Website, including no mention of the ‘245 Patent at all, a reasonable jury could conclude that GENE A never used or implemented its own patent.

29) In sum, GENE A obtained its ‘245 Patent only because it failed to cite WSA as prior art in its patent application at the USPTO. A reasonable examiner would want to know of WSA as a prior art reference for the claims of the ‘245 Patent because seeing the WSA technology would make the claims of the ‘245 Patent obvious. A reasonable jury could conclude from this failure to cite known prior art that GENE A succeeded in committing fraud on the USPTO.

30) In conclusion, GENE A’s only use of its patent at issue here is to shut down small competitors such as Plaintiff FULTON.

III. THE PARTIES

A. Plaintiffs

31) Plaintiff FULTON is a California resident with his principal place of business at 2500 E. Imperial Highway, #201-313, Brea, California. FULTON is in the building management business and sells systems using WSA.

B. Defendants

32) Defendant GENE A is a California Corporation with its principle place of business at 23691 Del Rio, Yorba Linda, County of Orange, California.

33) Defendant VOYSEY is the Chief Technology Offer of GENE A and named inventor of the ‘245 Patent. GENE A employs more than 100 people and has revenues exceeding \$8–10 million annually. VOYSEY claims to be the CEO of Genea. He sold interests in GENE A and valued these interests based obtaining and enforcing patents in the energy management field. VOYSEY seeks to demonstrate the enforceability of his patents in order to justify the

1 valuation of his companies. Defendants BALKIN and TAYLOR work at Genea and were
2 CC'd in GENE A's C & D Letter.

3 34) The true names and capacities of the Defendants DOES 1 through 50, whether
4 individual, corporate, associate or otherwise, are unknown to Plaintiff at the time of filing this
5 Complaint and Plaintiff, therefore, sues said Defendants by such fictitious names and will ask
6 leave of Court to amend this Complaint to show their true names or capacities when the same
7 have been ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of
8 the DOE Defendants is, in some manner, responsible for the events and happenings herein set
9 forth and proximately caused injury and damages to the Plaintiff as herein alleged.

10 11 **IV. BUSINESS OF THE PARTIES.**

12 **A. GENE A Energy Partners, Inc.**

13 35) Competitors in the marketplace where GENE A and FULTON do business owe duties
14 to each other to not make unsupported or unjustified allegations of impact or infringement on
15 their intellectual property. Once allegations of patent infringement are made, the accused
16 infringer must take steps to avoid willful infringement. GENE A violated this duty by making
17 false allegations that FULTON and WSA infringed on GENE A's '245 Patent. However,
18 GENE A's C&D Letter failed to include any description of infringing conduct. A reasonable
19 jury could conclude from this that GENE A was either careless or reckless.

20 36) Without any information which he could use to modify WSA systems in order to
21 avoid willful infringement, FULTON's business based on WSA continued to decline even
22 after GENE A promised in December 2013 to not sue for infringement of the '245 Patent for
23 present versions of WSA.

24 37) FULTON and GENE A compete domestically and internationally in building
25 management. GENE A has advertised on its website that several patents, including the '245
26 Patent. Because of the results in the first phase of this litigation in Federal Court, GENE A no
27 longer advertises its patents on its website.

28 **B. Mark Fulton And Integrity Automated Solutions [IAS].**

1 37) WSA technology consists of a web and PC based software application installed on a
2 computer that allows tenants to order air conditioning and lighting serviced in computer
3 controlled buildings. The software generates an invoice for periods of requested service that
4 are not covered by the lease hours. WSA does not use metered energy usage data.

5 38) During this time FULTON's WSA-based business growth has declined substantially
6 because of the uncertainty of the threat of a lawsuit from Genea and their claims of patent
7 infringement. By stopping further development of WSA, FULTON took the only reasonable
8 step to avoid potentially devastating litigation and/or willful infringement.

9 39) FULTON is the owner and general manager of Integrity Automated Solutions [IAS], a
10 growing company which he founded in 2004 and where he has full profit-loss responsibility.
11 IAS has 21 employees in the following departments: Building Automation, Electrical
12 Construction and Installation, and Heating Ventilation and Air Conditioning (HVAC). IAS
13 has grown over the past eight (8) years to 2-1/2 million in annual sales. Annual profits are
14 approximately 12-15% percent of revenue.

15 40) IAS has developed a strong niche in the local Los Angeles market by offering non-
16 proprietary systems for building automation systems. Typically, systems for managing
17 energy usage in commercial buildings are first customized for one location and then adapted
18 for other specific location. These systems are installed in a wide range of buildings, from a
19 single building sites to multi-tower office complexes. Traditionally it was difficult or
20 impossible to take one system installed at one location and move it to another without
21 substantially changing it due to the need for detailed customization.

22 41) IAS has been installing an off-the-shelf system called WSA for more than five (5)
23 years. IAS installed WSA in over 25 locations in several states and countries. IAS devoted
24 over 2,000-2,500 man-hours during this time selling and promoting WSA. After recognizing
25 the trend in the industry towards more "open" standardized applications, IAS achieved an
26 industry leading position starting in 2010 in the growing trend towards off-the-shelf solutions.
27 During a 3 year period IAS installed systems in four (4) of the largest high rise buildings in
28

1 downtown Los Angeles: AON Tower (707 Wilshire), Figueroa Tower (777 Figueroa), 1
2 California Plaza 300 South Grand, and 800 West 6th Street.

3 42) IAS was an innovator in seeking to sell software-based energy management systems
4 for commercial buildings through distributors on the internet. IAS has developed a stellar
5 reputation for providing the low cost, open protocol solutions for their customers with
6 excellent follow up service and support. Starting in January, 2012, after building a successful
7 and consistent source of revenue and profits for IAS based on WSA, IAS was forced by
8 GENE A to shut down and severely restrict business activities. IAS had been invited to sell
9 and had planned on selling six (6) systems to LBA Realty in Irvine, California [LBA]. LBA
10 had potential for many more system installations, as they own and manage over 40 million
11 feet of property in the southwest part of the United States. As a result of receiving GENE A's
12 C&D Letter and unresolved issues regarding infringement, the LBA project was awarded to
13 GENE A.

14 43) Beginning in March, 2012, IAS stopped further development of its WSA business
15 because clients were reluctant to consider WSA systems due to the on-going threat of
16 litigation from GENE A. As a result of following the demands in the cease and desist letter to
17 stop using and marketing WSA, FULTON completely backed away from several large
18 projects, including the LBA Realty Project discussed above, and also stopped local marketing
19 initiatives and regional sales campaigns in the Greater Los Angeles area. FULTON could not
20 follow through with OEM marketing campaigns involving Delta Control, Reliable Controls,
21 Distech Controls, and Andover as discussed above and his plans for international expansion
22 into South America, Europe, China, Australia and Canada were terminated.

24 44) By 2014, GENE A's refusal to withdraw its C&D Letter prevented IAS from resuming
25 these marketing campaigns.

26 45) Since GENE A refused to explain its allegations of infringement and further concealed
27 its claims analysis, IAS could do nothing to prove that WSA did not infringe on the '245
28 Patent. IAS took the only reasonable course of action when threatened by potentially ruinous

1 patent litigation and withdrew from the market. Clients and customers are still reluctant to
2 consider installing WSA systems because GENE A has not withdrawn its C&D Letter.

3 **D. Business Plans for WSA and IAS.**

4 46) FULTON had developed plans to pursue international markets *via* eBay, *e.g.* South
5 America, Europe, *e.g.* Great Britain, France, and Germany, China, Australia, and Canada.
6 But the continuing restraining effects of GENE A's C & D Letter scuttled all plans for
7 international expansion.

8 47) FULTON had a general sales and marketing plans to distribute WSA as an OEM
9 product to several energy management systems manufacturers, none of whom then had an
10 after-hours control system to offer their clientele. Plaintiffs were in direct talks and
11 negotiations with Delta Controls (deltacontrols.com/), Reliable Controls
12 (reliablecontrols.com), Distech Controls (distech-controls.com), and Andover Controls
13 (ftp.andovercontrols.com).

14 48) By 2011 FULTON was working on detailed plans to implement a long-term, strategic
15 plan which was centered on using WSA. FULTON planned to implement a marketing
16 strategy using the internet for Web-based marketing to small-to-medium sized buildings. The
17 drop in prices for PCs to between \$300-\$400/unit opened up new markets for WSA. This
18 pricing differential and the technical capabilities of WSA gave FULTON a valuable strategic
19 advantage over their competitors.
20

21 49) FULTON's losses caused by GENE A's C & D Letter did not occur immediately By
22 2012 as a result of the unresolved issues of GENE A's claims of patent infringement,
23 FULTON had begun to losing substantial business. Beginning in March, 2012, IAS stopped
24 further development of WSA business because clients were reluctant to consider WSA due to
25 the threat of litigation from GENE A.

26 50) Starting in mid-2012, GENE A was on notice that FULTON was suffering damages,
27 including but not limited to, business and financial losses and that Plaintiff exited or severely
28 reduced their businesses as a result of the actions of GENE A. FULTON was at that time

pursuing international markets in South America *via* eBay, including Europe (Great Britain, France, Germany, etc., China, Australia, and Canada. But the continuing effect of GENE A's cease and desist letter put an early rest to any international expansion, even after GENE A issued a covenant to not sue.

51) Annual revenue for IAS from the WSA platform for the past 5 years averaged between \$45,000-\$60,000. During the past two (2) years since mid-2012, ever since GENE A sent its cease and desist letter on June 22, 2011, revenue from WSA has declined sharply. And as a consequence of receiving GENE A's C&D Letter, IAS did not pursue sales opportunities and terminated significant domestic and international business expansion strategies and marketing initiatives.

52) Since mid-2012, FULTON was inhibited from actively selling WSA declined to pursue leads due to fear of litigation and the uncertainty generated by GENE A's public and private claims of infringement. IAS removed WSA from marketing material and IAS's website at www.iascontrols.net and IAS also cut back on existing and on-going sales efforts that were in the pipeline for fear of reprisals from both GENE A.

53) Even after GENE A issued its Covenant to Not Sue in December, 2013, IAS cannot use WSA feely because of ongoing doubts about GENE A's claims of infringement and wrongful impact on GENE A's IP.

V. EVENT SYNOPSIS.

A. GENE A'S '245 Patent Issued by USPTO.

54) GENE A's '245 Patent was issued on August 10, 2010.

55) WSA is prior art to the '245 Patent.

56) GENE A did not cite WSA as prior art in its patent application.

B. GENE A Knew the WSA Technology From Two Prior Inspections of WSA.

1 57) In 2008 GENE A secretly inspected WSA at an installed site [SECRET
2 INSPECTION]. To gain access, GENE A falsely stated that it had been authorized to conduct
3 an inspection.

4 58) During 2010 GENE A inspected WSA through the internet [INTERNET
5 INSPECTION]. This search made available all of the pages used by WSA.

6 59) Before sending its C & D Letter, GENE A had already gained full access to the WSA
7 software and technology and learned its inner architecture. As a result, GENE A knew or
8 should have known that WSA did not infringe on the claims of the '245 Patent.

9 60) GENE A had no reasonable belief that WSA infringed on its '245 Patent.

10 61) Based on its inspections, GENE A had sufficient facts to analyze the functionality of
11 WSA and compare it to the claims of the '245 Patent. GENE A had sufficient information to
12 conduct a claims infringement analysis without another inspection.

13 62) WSA does not use metered energy usage data. Plaintiffs informed GENE A that WSA
14 does not use metered energy usage data prior to filing this action. But even when GENE A
15 admitted, on or about December 2013, that WSA did not infringe on the '245 Patent, GENE A
16 still refused to withdraw its C & D Letter. The C & D letter continues to cause business
17 losses to FULTON.

18 63) GENE A knew or should have known that WSA did not use metered energy usage
19 data and therefore did not infringe on any of the claims of the '245 Patent.

20 64) GENE A did not ask either FULTON or WSA's developer for information about or an
21 inspection of WSA. Nor did GENE A seek any information on the features and functionality
22 of WSA from either FULTON or its developer. FULTON has never been contacted by
23 GENE A about any conflict between WSA and the '245 Patent. Nor has GENE A contacted
24 either FULTON or the developer about any wrongful impact on intellectual property.

25 65) GENE A never provided FULTON with a claims or infringement analysis before or
26 after sending its C & D Letter.
27
28

66) The C & D Letter does not describe any infringing conduct by WSA. Nor does it identify patent claims infringed. GENE A provided no information or data that would have assisted FULTON in avoiding willful infringement on Genea's '245 Patent

67) GENE A never identified any wrongful impact on Genea's intellectual property in its C&D Letter. GENE A never provided any information to FULTON on any wrongful impact on GENE A's IP.

68) GENE A never contacted FULTON about infringement on its '245 Patent or wrongful impact on its intellectual property because it already knew that there was no infringement or wrongful impact.

69) GENE A had no evidence that WSA infringed on the '245 Patent.

70) GENE A has no evidence that WSA wrongfully impacted GENE A's IP.

C. Plaintiffs Asked GENE A To Explain Its Allegations of Patent Infringement and Wrongful Impact on Intellectual Property.

71) WSA does not infringe on the '245 Patent or GENE A's intellectual property.

72) FULTON does not wrongfully impact any of GENE A's intellectual property.

73) The C & D Letter does not specify which claims of the '245 Patent were infringed.

74) When FULTON inquired about the details of GENE A's claims of infringement multiple times, GENE A had a duty to provide all necessary information and explanations so that Plaintiffs could avoid infringement, if any.

75) GENE A's attorney at Mintz Levin, John Guist [GUIST] regularly visited Plaintiffs' sales website (WSA.com). Downloadable files that show WSA invoicing using time-based billing. Every input and output page of the WSA system is displayed. No page uses or refers to using metered energy usage data.

D. GENE A Sent a Cease and Desist Letter Knowing That WSA Did Not Infringe On the '245 Patent.

76) In 2011, Genea sent a cease and desist letter [C & D Letter] to FULTON demanding that he stop using WSA and refrain from using any technology which "impacted Genea's intellectual property".

1 77) The effect of reading this letter was dreadful and unnerving to FULTON, especially
 2 since it came from the law offices of a prominent law firm, Mintz *et al.* in San Diego,
 3 California. Although the letter was threatening, it was also confusing because it did not
 4 identify which claims were being infringed upon nor how the infringement was occurring.

5 78) GENE A did not provide a claims infringement analysis. GENE A did not explain how
 6 WSA or any of Plaintiff's products or technology impacted GENE A's IP.

7 79) GENE A did not identify any of the patent's claims which were allegedly infringed
 8 upon.

9 80) Defendants VOYSEY, BALKIN, and TAYLOR were involved in writing and
 10 authorizing this C&D Letter. Specific allegation of their roles will be further pled when
 11 discovery is permitted.

12 81) GENE A threatened to "take all appropriate legal action to protect its intellectual
 13 property, including its patent rights." GENE A also demanded that Plaintiffs "confirm, within
 14 30 days, that you have ceased to market and sell WSA™, or have changed the product
 15 significantly so that it is not impacted by GENE A's intellectual property" (emphasis added).

16 82) GENE A advised FULTON that GENE A "believes that this patent ['245 PATENT]
 17 impacts your present and/or future business with respect to this product (Web Smart Air™),
 18 and requests that you cease all efforts that may impact Genea's intellectual property." (letter
 19 from John E. Guist to Mark Fulton and John Matter dated June 22, 2011) (emphasis added).

20
 21 **E. GENE A's Refusal To Describe Any Infringing Conduct Forced FULTON to**
 22 **Abandon WSA.**

23 83) As a direct consequence of GENE A's direct request to stop conducting all business in
 24 competition with GENE A, as well as its public accusations that WSA infringed on the '245
 25 Patent, FULTON was compelled to quit their businesses built around WSA systems, stop
 26 further development of WSA, and forced to abandon plans for future expansion and
 27 development internationally through eBay.
 28

1 84) During 2012, in response to GENE A's demands, Plaintiffs stopped further
2 development and sales of WSA and curtailed important business development projects using
3 WSA. Plaintiffs could not resume using or developing WSA business because GENE A
4 refused to provide any information on their allegations of infringement which would have
5 enabled FULTON to avoid willful infringement on the '245 Patent and any wrongful impact
6 on GENE A's intellectual property.

7 85) FULTON reasonably calculated that, in the complete absence of infringement
8 information from GENE A, there was a great danger from potential liability from continuing
9 willful infringement, if infringement were found.

10 86) FULTON reasonably calculated that any benefit from using or developing WSA any
11 further was far outweighed by the potential liability stemming from GENE A's allegations of
12 infringement. As a result, FULTON lost substantial sales. FULTON reasonably concluded
13 that leaving their clients and customers out of this patent dispute, by refraining from
14 marketing, selling or further developing WSA business, was required due to GENE A's
15 allegations.

16 87) After January, 2012 customers and clients of FULTON started to decide not to
17 purchase, use or continue to use the WSA technology as a direct and proximate result of
18 GENE A's allegations of infringement the '245 Patent. This trend continues as a direct and
19 proximate result of GENE A's refusal to withdraw its C&D Letter, even after admitting that
20 there is no infringement or wrongful impact. FULTON notified GENE A that he was losing
21 business because of GENE A's C&D Letter, to no avail.

22
23 **F. GENE A Failed To Describe Infringing Conduct By WSA and Refused to**
24 **Provide Any Information on its Allegations of Infringement.**

25 88) Defendants VOYSEY, BALKIN, and TAYLOR were involved in writing and
26 authorizing this C&D Letter. GENE A withheld information from the Plaintiffs regarding the
27 impact on GENE A's intellectual property. Because Plaintiff could not figure out how to do
28 business without impacting GENE A's intellectual property or violating their patents, Plaintiff

1 stopped using, accessing, and further developing WSA software and equipment. As a direct
 2 and proximate result of this reasonable decision, Plaintiff lost his business initiative and
 3 strategic technology position. In short, Plaintiff was forced to forgo expansion plans due
 4 solely to the unresolved issues raised by GENE A's C&D Letter and GENE A's refusal to
 5 explain its allegations of infringement.

6 89) GENE A's failure to compare WSA's functions with the '245 Patent claims was
 7 recklessly oppressive because GENE A subjected Plaintiffs to foreseeable and unjust hardship
 8 in the form of avoidable business losses and lost development time.

9 **G. GENE A's Failed To Conduct a Claims Infringement Analysis Before**
 10 **Sending Its Cease and Desist Letter.**

11 90) GENE A's failure to provide any justification or explanation of which products of
 12 FULTON wrongfully impacted Genea's intellectual property is despicable because
 13 reasonable people would expect that people making allegations of wrong doing must explain
 14 themselves.

15 91) The C & D Letter contained no explanation of GENE A's allegations of infringement,
 16 so that FULTON was unable to modify his use of WSA technology and business to avoid
 17 willful infringement.

18 92) Nor did the C & D Letter contain any claims infringement analysis, so that FULTON
 19 was unable to explain to potential clients and customers that there was no infringement.

20 93) The letter did not describe any infringing or impacting conduct on GENE A's
 21 intellectual property. Without any information on allegedly infringing conduct, FULTON
 22 was unable to fully use, access or further develop WSA systems and businesses since further
 23 use and development would have been destroyed or confiscated under the patent law if any
 24 infringement were found.

25 **H. GENE A Counsel John Guist Failed to Explain Allegations of**
 26 **Infringement.**

27 94) FULTON wrote to GENE A's counsel: "Given the serious nature of your client's
 28 assertions of infringement along with the paucity of supporting facts and argument, and the

1 fact that they are communicating such accusations to actual and potential customer of my
2 clients, all such activity must stop. In addition, unless recent claims of patent infringement
3 are further substantiated, my clients require a written acknowledgement that their product and
4 technology does not in any way infringe on your '245, your clients' sole patent, by August 10,
5 2011." Email from Richardson to Guist (dated July 23, 2011).

6 95) GUIST responded on July 26, 2011: "As I stated in my phone call, we believe that
7 Web Smart Air system sold by your clients infringes at least claims 1, 6, 7, 8, 10, 13, 16 and
8 17 of U.S. Patent No. 7,774,245. This is sufficient information to allow you to undertake
9 your own analysis, given that you have access to that system and how it operates. Therefore
10 we will not be providing our work product and we will not retract that claim unless you can
11 convince us that there is no infringement (emphasis added)." Merely identifying claims
12 without an explanation of infringing conduct is insufficient for the Plaintiffs to modify or
13 change WSA™ or their products and technology to avoid willful infringement and wrongful
14 impact.

15 96) GUIST went on further to say that: "Truth is an ultimate defense to defamation and
16 while we believe it to be the truth that your clients infringe we have not been able to uncover
17 any statements made by Genea's employees to any of your existing or potential customer
18 where "infringement" was alleged. However, Genea and your clients are engaged in a
19 dispute regarding Genea's IP. The facts that there exists IP, that there exists a dispute, are true
20 and real and not defamation . . .". *Id.*

21 97) Despite numerous requests, GENE A refused to explain its allegations that WSA
22 infringed on the '245 Patent. When FULTON's counsel stated to GUIST that "I looked for a
23 definition of "metered energy usage data" and found none in the patent nor any in any
24 publicly available source of information", he responded that "[o]ur position is that your
25 clients infringe the stated claims under a reasonable claim construction. Certainly every term
26 need not have an express definition in the specification. we [sic] believe that this term is
27 met."
28

1 98) GENE A willfully and intentionally avoided providing the information which Plaintiffs
2 sought and need to avoid willful infringement.

3 99) GENE A conducted and then provided only a frivolous claims infringement analysis.

4 100) Soon thereafter, GUIST emailed to Mr. Richardson: “Greg, I’m working on a letter to
5 you, what is your street address? I’ll email you the letter when it is done, just wanted the right
6 address to make the address fields look right.” Guist thus promised to provide a claims
7 infringement analysis.

8 101) In reply to this counsel’s response providing his then-current address, GUIST stated
9 on November 1, 2011: “Thanks, hope to have something to you by the end of the week.”
10 And subsequently on November 18, 2011: “Greg, my letter to you is delayed due to Genea
11 hiring a new CEO who needs to be brought up to speed on the relevant issues. I’m not sure
12 what is going to happen next (or when) but just wanted to let you know.”

13 102) Because of the vagueness of Genea’s C&D Letter and its lack of a claims
14 infringement analysis, Plaintiffs requested multiple times for an explanation of Genea’s
15 claims of infringement. Genea never supplied an explanation other than to say that under a
16 reasonable interpretation of the claims of the ‘245 Patent, WSA infringed. Genea informed
17 Plaintiffs that it was their responsibility to avoid infringement.

18 103) When Plaintiffs notified GENE A that there could not possibly be any infringement
19 because WSA did not involve “metered energy usage data”, Genea did not respond or engage
20 in further analysis or provide a counter-analysis. When FULTON requested that GENE A
21 stop making public accusations of infringement, GENE A refused. When Plaintiffs requested
22 that GENE A withdraw its C&D Letter because no explanation of infringement had ever been
23 provided, again Genea refused. After many requests for a written explanation of allegations
24 of infringement, Genea finally stated that they would provide an explanation. Yet, Genea
25 failed to do so.
26

27 104) GENE A broke its promise to provide a claims infringement analysis and failed to
28 provide any information to FULTON which he needed to avoid willful infringement. This

1 broken promise was an attempt to delay FULTON from filing a lawsuit and create issues
2 regarding statute of limitations.

3 **VI. THE FEDERAL ACTION AND GENE A'S FAILURE TO WITHDRAW ITS**
4 **ALLEGATIONS OF PATENT INFRINGEMENT AND WRONGFUL IMPACT**
5 **ON ITS INTELLECTUAL PROPERTY.**

6 **A. First Action For Declaratory Relief.**

7 105) Litigation between the parties began in federal court on September 10, 2012 when
8 Plaintiffs filed an action for declaratory relief in the United States District Court, Southern
9 District of California (SA CV 12-01506) [FEDERAL LITIGATION]. Plaintiffs sought a
10 declaration that WSA does not infringe on the '245 Patent. On or about December, 2013
11 Plaintiffs became the prevailing party in the Federal Litigation when GENE A covenanted to
12 not sue Plaintiffs for infringement on the '245 Patent for existing versions of WSA only.

13 106) FULTON did not seek a determination that the '245 Patent was invalid in the
14 FEDERAL LITIGATION because he had insufficient information on the scope of the patent
15 claims and damages. FULTON did not then raise California state law claims because
16 damages and unfair competition claims had not yet fully accrued.

17 107) Under a then-existing split of authority among the federal circuits, the covenant-to-
18 not-sue eliminated any federal question arising under the patent laws of the United States
19 under a then-existing split of authority. Current law provides that a covenant offered by one
20 with the burden of proof of infringement does not eliminate federal question jurisdiction.

21 **B. GENE A's Third Inspection of WSA.**

22 108) GENE A conducted a third Inspection of WSA, which lasted about two (2) hours
23 [FEDERAL INSPECTION] GENE A's expert Dr. Ken Goldberg and VOYSEY, the named
24 inventor of the '245 Patent, took turns inspecting WSA.

25 109) GENE A saw the same web pages that are available on www.WSA.com.

26 110) GENE A now knows the internal functionality of the WSA platform. This information
27 gives them a competitive advantage and would not have been acquired but for the inspections.
28

1 111) GENE A did not know that Plaintiffs knew of GENE A's Secret Inspection or Internet
2 Inspection until a hearing on or about October 2013 during the Federal Litigation.

3 **C. GENE A Offered a Covenant to Not Sue For Infringing the '245 Patent.**

4 112) During the Federal Litigation GENE A delayed acknowledging that WSA did not
5 infringe the Patent '245 until December 2013, even though from inspections in 2008 and
6 2010 it knew that WSA did not infringe the '245 Patent.

7 113) GENE A delayed the covenant-to-not-sue until December 2013 because it wanted to
8 create the impression that it had no grounds for believing that there was no infringement until
9 its Second Inspection of WSA during the Federal Litigation on or about October 2013.

10 114) Since the COVENANT-TO-NOT-SUE does not cover the full scope of GENE A's
11 allegations of impact and infringement on Genea's intellectual property, the Plaintiffs were
12 forced into filing this lawsuit. The damaging consequences of sending the C & D Letter
13 continue to cause damages to the Plaintiffs because the C & D Letter continues to exert an
14 inhibiting effect on Plaintiffs' business by restricting sales and further development of WSA.

15 115) GENE A admits that WSA does not infringe on the Patent '245. But GENE A refuses
16 to withdraw its C & D Letter, thereby continuing the harm caused by the C & D.

17 116) The conclusion of the federal litigation did not eliminate state-law claims because the
18 COVENANT-TO-NOT-SUE does not cover the full scope of GENE A's allegations of
19 infringement and wrongful impact on intellectual property. Actual and potential customers of
20 Plaintiffs continue to cite this patent and intellectual property dispute between the parties as a
21 good reason to not use or purchase anything using WSA.

22 117) By sending its C & D Letter, GENE A caused and continues to cause the damages to
23 the Plaintiffs by forcing them to withdraw WSA from the market and refrain from further
24 developing WSA. GENE A refusal to withdraw its C & D Letter further restricts the Plaintiffs
25 from developing the business and technology based on the WSA technology platform.
26 GENE A continues to benefit from its C & D Letter by obtaining profits and other business
27 benefits which it would not have obtained.
28

D. GENE A's Incomplete Covenant-To-Not-Sue Does Not Cover Allegations of Wrongful Impact on GENE A's Intellectual Property.

118) By 2013, GENE A promised to not sue Plaintiffs for infringing on the '245 Patent. But GENE A did not promise to not sue from wrongful impact on its intellectual property. The Covenant-to-Not-Sue was ineffective because clients and customers of Plaintiffs continue to cite GENE A's allegations of patent infringement and wrongful impact as reasons for declining to use the WSA technology platform.

119) GENE A never provided a justification for it claims that WSA infringed on the '245 Patent. Nor did GENE A justify its demands that Plaintiffs cease to market and sell WSA. By refusing to withdraw its C & D Letter, GENE A continues to maintain their demands that the Plaintiffs stop impacting GENE A's intellectual property.

120) The customers and clients of the Plaintiffs are pragmatic and have reasonably decided not to use or purchase WSA because of the cloud of suspected infringement which GENE A raised but now refuses to dispel.

E. GENE A Refused To Withdraw Its Cease and Desist Letter Despite Admitting That WSA Does Not Infringe Upon the '245 Patent.

121) GENE A continues to refuse to withdraw its C & D Letter.

122) GENE A maintains its C & D Letter because it intends to do everything possible to prevent people from using and further developing WSA.

123) Potential clients and customers of Plaintiffs are reluctant to involve themselves with physical installations of WSA due to Genea's allegations of patent infringement and wrongful impact on its intellectual property. GENE A continues to gain an unfair competitive edge over the Plaintiffs and the Plaintiffs continue to lose business and full access to their WSA technology platform and associated business due to GENE A's conduct.

124) In sum, GENE A's use of a cease and desist letter to deter the Plaintiffs from competing with them is anti-competitive. Sending its C & D was unfair because GENE A sent its C & D Letter without any description of infringing conduct.

1 125) GENE A actions are oppressive and unfair because Plaintiffs need a description of
2 infringing conduct in order to avoid willful infringement, assuming that infringement exists.

3 126) GENE A's refusal to provide claims infringement analysis is fraudulent. As a result of
4 Genea's C & D Letter alleging impact on its intellectual property, Genea owed a duty to
5 FULTON to respond to inquiries regarding any alleged infringement or impact on Genea's
6 intellectual property so that FULTON could avoid future infringement, if any existed. As a
7 result of sending a C & D Letter without a description of any infringing conduct, GENE A
8 owed a duty to FULTON further explain its allegations of infringement.

9 127) On November, 2011 GENE A's counsel GUIST promised to provide a claims
10 infringement analysis, but failed to do so. Had FULTON known that said promise would be
11 breached, they would have filed their Complaint much sooner.

12 13 **VII. VIOLATIONS ALLEGED**

14 **COUNT 1 -- Conversion**

15 128) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this
16 Complaint as if fully set forth herein.

17 129) Plaintiff uses property consisting of tangible software and hardware systems which
18 can be converted. The technology platform WSA consists of tangible forms of software on
19 hardware and computer systems. FULTON has rights to possess and access these WSA
20 systems and computers using WSA software and business equipment supported by WSA.

21 130) FULTON has the right to use and possess their technology, business, and intellectual
22 property, including WSA and associated business equipment, without interference caused by
23 Genea. Upon receiving Genea's C&D Letter, FULTON has the right to an explanation from
24 GENE A regarding its allegations of infringement and wrongful impact on GENE A's IP in
25 order to avoid future infringement and wrongful impact and to protect themselves from the
26 consequences of willful infringement.

27 131) By July 26, 2012 it became apparent that Genea wrongfully refused to provide a
28 description of the conduct infringing on its '245 Patent and wrongfully impacting GENE A's

1 IP. Since infringement might have been found, a description of allegedly infringing conduct
2 was needed by the FULTON because Genea threatened to deprive FULTON of his
3 possession of and access to the WSA technology platform and related business property
4 through confiscation or destruction of WSA under the patent laws. FULTON also required a
5 description of infringing conduct to avoid liability for willful patent infringement and
6 wrongful impact on Genea's intellectual property.

7 132) Genea wrongfully refused to explain its allegations of patent infringement and
8 wrongful impact on intellectual property in order to increase pressure on FULTON to stop
9 using, selling, and further developing the WSA technology platform. Genea concealed
10 infringement information with the intent to force FULTON to abandon and/or stop using,
11 selling, and accessing the WSA technology platform for fear of ruinous patent litigation and
12 liability for willful infringement.

13 133) Genea continues to substantially interfere with FULTON's of the use and possession
14 of their products and technology by failing to withdraw its cease and desist letter which still
15 alleges patent infringement and wrongful impact on Genea's intellectual property. Genea's
16 C&D Letter is still relied upon by actual and potential clients and customers of Plaintiff in
17 declining to use or consider WSA technology platform.

18 134) By refusing to withdraw its C&D Letter, Genea continues to intentionally and
19 substantially interfere with the FULTON's right to possess and access the WSA technology
20 platform and related business property. Maintaining the C&D Letter creates continuing
21 doubts as to whether WSA infringes on Genea's '245 Patent and wrongfully impacts
22 GENE's IP. As a direct and proximate result of Genea's failure to withdraw its C&D
23 Letter, FULTON has essentially stopped using and developing WSA and actual and potential
24 clients and customers of FULTON have stopped purchasing WSA equipment. At one point,
25 given GENE's allegations of infringement on its '245 Patent, FULTON lost his rights to
26 possess and access WSA equipment.
27
28

1 135) FULTON did not consent to Genea's concealment of infringement information and
2 the resulting substantial interference with the WSA technology platform and its
3 accompanying business equipment. Genea's action harmed FULTON by forcing them to
4 reduce usage and future development of the WSA equipment and technology, so that
5 FULTON eventually abandoned WSA and its associated business equipment.

6 136) By withholding information on allegations of patent infringement and wrongful
7 impact on GENEAE's IP, Genea substantially interfered with FULTON's rights to possess,
8 use, access, modify, and further develop the WSA technology and business equipment by
9 threatening ruinous patent litigation which would have ended up with the confiscation and
10 destruction of WSA equipment.

11 137) FULTON was harmed by Genea's refusal to explain its allegations of infringing
12 conduct because infringement on the '245 Patent would eventually result in the confiscation
13 or destruction of the WSA platform under the patent laws. Without an explanation of
14 infringing conduct, FULTON could not modify WSA systems in order to avoid willful
15 infringement.

16 138) FULTON continues to be harmed by Genea's refusal to withdraw its allegations of
17 wrongful impact on Genea's intellectual property and Genea's failure to identify which
18 products and technology of FULTON wrongfully impact Genea's intellectual property
19 because actual and potential clients and customers of FULTON decline to use or consider
20 WSA technology.

21 139) Genea's failure to describe the conduct infringing on its patent and refusal to identify
22 which products and technology wrongfully impact GENEAE's IP were a substantial factor in
23 causing business losses to the FULTON and preventing him from the full use, access, future
24 development, and possession of the WSA technology platform equipment and business.
25 Genea's failure to withdraw its cease and desist letter after December, 2013 continues to be a
26 substantial factor in causing business losses to the FULTON and preventing him from fully
27 using WSA equipment.
28

140) The last of the above-cited actions of Genea causing damages to FULTON, *e.g.* GENE A's refusal to withdraw its C&D Letter, occurred within two (2) years of the filing date of this Complaint and the damages continue to accrue. Plaintiff's claims for conversion under the UCL started to accrue when the last of the above-cited actions by GENE A causing damages to the Plaintiff occurred, *e.g.* GENE A's refusal to withdraw its C&D Letter in December 2013. This accrual occurs within four (4) years of the filing of this Complaint and within the statute of limitations for UCL claims.

141) As a result of giving up the use of and access to WSA property and associated business and technology, FULTON suffered damages based on the market value of his WSA business and WSA systems in a sum according to proof but exceeding the jurisdictional limits of this court.

COUNT 2 -- Trespass To Chattels

142) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

143) Plaintiff owns business equipment using the technology platform WSA which consists of tangible forms of software on hardware and computer systems. FULTON has the right to possess and access systems and computers using WSA software and business equipment supported by WSA.

144) By July 26, 2012 it became apparent that Genea refused to provide a description of the conduct allegedly infringing on its '245 Patent and wrongfully impacting Genea's intellectual property. This refusal was wrongful because Genea had a duty to inform FULTON of what the infringing conduct was, if any, so that FULTON could avoid future willful patent infringement and unnecessary wrongful impact on Genea's intellectual property.

145) As a result of the FULTON requesting an explanation from Genea about Genea's allegations of infringement on its intellectual property, Genea owed a duty to Plaintiff to disclose facts that would explain its allegations. Genea knew or should have known that it owed a duty to provide a description of infringing and impacting conduct by WSA. Genea

1 knew or should have known that WSA did not wrongfully impact GENE A's IP or infringe on
2 Genea's '245 Patent as a result of its prior inspections.

3 146) By refusing to provide the requested information regarding infringing conduct and
4 wrongful impact, Genea intended to interfere with Plaintiff's use and possession of systems
5 and equipment with WSA installed by forcing Plaintiff to abandon WSA. At the same time,
6 Genea intended to discourage actual and potential clients from purchasing and using WSA
7 systems and equipment.

8 147) Plaintiff did not consent to Genea's interference with computers and systems using
9 WSA by, among other actions, refusing to accede to Genea's demands to cease using and
10 marketing WSA.

11 148) Genea refusal to explain its allegations of patent infringement and wrongful impact on
12 Genea's intellectual property was wrongful and caused Plaintiff harm because such
13 explanation was withheld in order to increase the pressure on Plaintiff to stop using, selling,
14 and further developing WSA technology platform. Genea's refusal to provide any description
15 of infringing conduct was motivated by a desire to thereby force Plaintiff to abandon and/or
16 stop using, selling, and accessing the WSA technology platform for fear of ruinous patent
17 litigation and liability for willful infringement.

18 149) Genea continues to substantially interfere with Plaintiff's use and possession of their
19 products and technology including WSA equipment by failing to withdraw its C&D Letter
20 which still alleges patent infringement and wrongful impact on Genea's intellectual property.
21 This letter is still relied upon by actual and potential clients and customers of Plaintiff in
22 declining to use or consider WSA technology. Maintaining the C&D Letter creates
23 continuing doubts in the minds of actual and potential clients and customers of Plaintiff as to
24 whether WSA infringes on Genea's '245 Patent and wrongfully impacts GENE A's IP.

25 150) As a direct and proximate result of Genea's failure to withdraw its C&D Letter,
26 Plaintiff has suffered losses because he has had to essentially stop using and developing the
27 WSA technology platform.
28

1 151) By withholding information on allegations of patent infringement and wrongful
 2 impact on Genea's intellectual property, Genea's actions became a substantial factor in
 3 causing Plaintiff to abandon WSA equipment and technology. This in turn caused actual
 4 customers and clients who were contemplating using WSA to decide not to purchase and/or
 5 use WSA. Genea's failure to withdraw its cease and desist letter after December, 2013
 6 continues to be a substantial factor in causing business losses to the Plaintiff and preventing
 7 him from fully using WSA equipment, technology, and business.

8 152) The last of the above-cited actions of Genea causing damages for trespass to chattels
 9 occurred within two (2) years of the filing date of this Complaint and the damages continue to
 10 accrue. Plaintiff's claims for trespass to chattels under the UCL started to accrue when the
 11 last of the above-cited actions by GENE A causing damages to the Plaintiff occurred, *e.g.*
 12 GENE A's refusal to withdraw its C&D Letter in December 2013. This accrual occurs within
 13 four (4) years and within the statute of limitations for UCL claims, of the filing of this
 14 Complaint.

15 153) As a result of giving up access to and use of property incorporating WSA technology
 16 and its accompanying business, Plaintiff suffered damages based on the market value of WSA
 17 in a sum according to proof but exceeding the jurisdictional limits of this court.

18 **COUNT 3 -- Implied Contract And Quantum Meruit**

19 154) Plaintiff re-allege and incorporate the allegations of the preceding paragraphs of this
 20 Complaint as if fully set forth herein.

21 155) The Plaintiff owns and manages installations using the technology platform WSA and
 22 has rights to possess and access systems with WSA technology implemented and the business
 23 supported by WSA. Genea wanted to obtain the WSA technology platform and the business
 24 supported by it. By demanding that Plaintiff "cease[]" to market and sell WSA" and refusing
 25 to provide a description of infringing or impacting conduct, Genea knew or should have
 26 known that Plaintiffs would asset to Genea's demands.
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1 156) By refusing to withdraw its C&D Letter as of December 2013, Genea continues to
2 intentionally and substantially interfere with Plaintiff's right to possess, access, and further
3 develop the WSA technology platform and business property. By way of a non-exhaustive
4 example, a reasonable jury could find that maintaining the C&D Letter creates continuing
5 doubts as to whether WSA infringes on GENE A's '245 Patent and wrongfully impacts
6 GENE A's IP.

7 157) Plaintiff agreed to Genea's demands by shutting down parts of its WSA business and
8 stopping further development of their WSA business, thereby conferring a significant benefit
9 on Genea by reducing competition and handing over business to Genea.

10 158) Genea agreed to Plaintiff actions by covenanting to not sue for infringement on its
11 '245 Patent, thereby conferring a significant benefit on Plaintiff by eliminating Genea's
12 threats of litigating for willful infringement on its '245 Patent.

13 159) Plaintiff was harmed by Genea's refusal to explain its allegations of infringing conduct
14 because infringement on the '245 Patent would eventually result in the confiscation or
15 destruction of the WSA systems under the patent laws. Without an explanation of the
16 infringing conduct, Plaintiff could not modify WSA systems in order to avoid infringement.
17 Plaintiff continues to be harmed by Genea's refusal to withdraw its allegations of wrongful
18 impact on GENE A's IP because actual and potential clients and customers of Plaintiffs
19 decline to use WSA due to the allegations of infringement.

20 160) Within the last four (4) years since filing this Complaint, by the conduct of the parties,
21 an implied contract was formed in which Genea demanded that Plaintiff "cease[] to market
22 and sell WSA" and in return Genea would not to "take all appropriate legal action to protect
23 its intellectual property, including its patent rights." Plaintiff ceased to market and sell WSA
24 in compliance with Genea's demand. In return, Genea has not taken any legal action to
25 protect its intellectual property and patent rights.

26 161) Plaintiff's claims for breach of implied contract and quantum meruit under the UCL
27 started to accrue when the last of the above-cited actions by GENE A causing damages to the
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1 Plaintiff occurred, *e.g.* GENE A's refusal to withdraw its C&D Letter in December 2013.

2 This accrual occurs within four (4) years of the filing of this Complaint and within the statute
3 of limitations for UCL claims.

4 162) As a result of giving up access to and use of property incorporating WSA technology
5 and its accompanying business by acceding to Genea's demands to give up WSA, Genea
6 owes Plaintiff the reasonable market value of the systems using the WSA technology
7 platform and the underlying business in a sum according to proof, but exceeding the
8 jurisdictional limits of this court.

9 **COUNT 4 -- Intentional Misrepresentation And Deceit**

10 163) Plaintiffs re-allege and incorporate herein the allegations of the preceding paragraphs
11 as if fully set forth herein.

12 164) Genea, through authorized agents Keith Voysey, Chief Technology Officer, David
13 Balkin, position unknown, and Chris Taylor, position unknown, in the C & D Letter,
14 represented that WSA infringed on Genea's '245 Patent and that Plaintiff's products and
15 technology wrongfully impacted Genea's intellectual property. The exact roles of these
16 defendants is unknown, but when discovery is allowed to proceed, Plaintiff will amend this
17 Complaint. So far, discovery by Plaintiff has been unfairly stifled, while GENE A was
18 granted permission to conduct an intrusive inspection of WSA.

19 165) By sending a C&D Letter without a description of the infringing conduct or the
20 wrongful impact on Genea's intellectual property, Genea intended to deceive Plaintiff into
21 believing that WSA infringed on Genea's '245 Patent and that Plaintiff's products and
22 technology wrongfully impacted GENE A's IP.

23 166) Genea knew that its representation that WSA infringed on Genea's '245 Patent was
24 false when it sent its C&D Letter because Genea had already secretly inspected WSA in 2008
25 and conducted another inspection in 2010. GENE A should be estopped from claiming any
26 infringement since it failed to cite WSA as prior art in its patent application at the USPTO.
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1 167) Genea knew that its representation that WSA infringed on the claims of the '245
2 Patent were false through its internet inspection of WSA in 2010. Genea now knows that
3 WSA does not infringe on the '245 Patent based on its inspections. Yet Genea continues to
4 maintain its allegation of infringement on its '245 Patent and wrongful impact on GENE's
5 IP.

6 168) Genea made these representations recklessly since it had sufficient information to
7 know the lack of infringement as a result of its secret inspection of WSA in 2008 and internet
8 viewing of WSA on or about 2010. Genea made these representations without regard for the
9 truth of its allegations because Genea did not perform a claims infringement analysis. Genea
10 representations were reckless because it could have, but did not, request an inspection of
11 WSA and the products and technology of the Plaintiffs before sending its C&D Letter.
12 Genea's refusal to withdraw these false representations even after covenanting to not sue for
13 infringement in December, 2013 are reckless because it has sufficient information from its
14 three inspections of WSA to know that there is no infringement.

15 169) Genea intended that Plaintiff rely on the representations in Genea's C&D Letter in
16 order to prevent the Plaintiff from further developing WSA and further expanding the
17 Plaintiff's business using WSA.

18 170) Plaintiff reasonably relied upon Genea's representations that WSA infringed on
19 Genea's '245 Patent and that their products and technology impacted Genea's intellectual
20 property by curtailing Plaintiff's use of WSA in order to avoid any willful infringement.
21 Plaintiff's actions in reducing or eliminating using and developing WSA was reasonable
22 because of the threat of ruinous patent infringement litigation, the prospect of willful
23 infringement, as well as the possibility of confiscation or destruction of WSA computer
24 systems if patent infringement were proven. These actions of Plaintiff were necessary
25 because, without any explanation from Genea describing any infringing conduct, Plaintiff was
26 unable to explain to their customers and clients that there was no infringement.
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1 171) As a direct result of Genea's failure to explain its allegations of patent infringement in
2 its C & D Letter and thus preventing the Plaintiff from changing or modifying WSA to avoid
3 infringing on Genea's '245 Patent, since 2012 Plaintiff began to suffer business losses as a
4 result of not being able to use and access WSA or further develop products, technology, and
5 business using WSA to avoid impacting Genea's intellectual property.

6 172) These representations are false because WSA does not infringe on Genea's '245
7 Patent and Plaintiff's products and technology do not impact Genea's intellectual property.
8 Genea concealed the fact that WSA does not infringe on Genea's '245 Patent by not including
9 a description of infringing conduct in the C&D Letter. Genea further concealed the fact of
10 non-infringement by refusing to provide a claims infringement analysis upon the request of
11 Plaintiffs. Genea failed to disclose that WSA does not infringe on the '245 Patent by failing
12 to provide a claims infringement analysis.

13 173) As a direct and proximate result of receiving Genea's C&D Letter and reading
14 Genea's demand to stop using and marketing WSA, Plaintiff relied on Genea's statements
15 contained within the C&D Letter by reducing and/or stopping use of their own technology
16 and by exiting and/or suffering losses and reductions in their own businesses. Plaintiff's
17 compliance with Genea's demand to "cease[] to market and sell WSA" was reasonable due to
18 the threats of ruinous patent litigation, the lack of a claims infringement analysis from Genea,
19 and Genea's failure to describe any infringing conduct. These actions were reasonable in
20 light of the Plaintiff's intent to avoid willful infringement and desire to avoid future potential
21 confiscation of infringing systems incorporating WSA, should infringement be found.

22 174) Plaintiff's reliance on Genea's conduct and C&D Letter in reducing or stopping use
23 and further development of the WSA technology and related business was reasonable in view
24 of Genea's threats of ruinous patent litigation, its demand to "cease[] to market and sell
25 WSA", and the threat of confiscation and destruction of property incorporating WSA under
26 the patent laws.
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1 175) As a direct and proximate result of the actions of Genea in sending the C&D Letter
2 and thereafter refusing to explain its allegations of infringement on Genea's intellectual
3 property, Plaintiff lost the use and value of their intellectual property and business based on
4 WSA and its products and technology. As a direct and proximate result of Genea's failure to
5 withdraw the C&D Letter, even after covenanting to not sue in the federal litigation, Plaintiff
6 continues to suffer business losses due to Genea's continues assertion of wrongful impact on
7 Genea's intellectual property.

8 176) Genea's actions were malicious in that it had sufficient information about WSA when
9 it sent the C&D Letter to know or conclude that WSA did not infringe on Genea's '245 Patent
10 through its secret inspection in 2008 and internet inspection in 2010. Even then, Genea could
11 have obtained sufficient information to know that WSA did not infringe on Genea's '245
12 PATENT or impact Genea's intellectual property by requesting an inspection. Genea ignored
13 Plaintiffs statement that WSA could not possibly infringe on Genea's '245 Patent because
14 WSA did not use user metered energy usage data. Yet Genea willfully sent its C&D Letter
15 knowing that it would oppress Plaintiff into complying with Genea's demand to "cease[] to
16 market and sell WSA".

17 177) Genea's actions were deceitful in that it refused to disclose or make available
18 information on any infringing or impacting conduct by WSA, even though the Plaintiff had
19 requested such information multiple times and even though Genea knew that its allegations of
20 infringement and impact on its intellectual property and '245 Patent were false.

21 178) Genea's actions as stated herein were oppressive in that they were done with intent to
22 keep Plaintiff from using WSA to compete in the markets in which the parties compete.
23 Genea's refusal to withdraw its C & D Letter is oppressive against the Plaintiffs since Genea
24 knows full well that there is no infringement and because Genea is able to continue benefiting
25 from its false allegations of infringement and wrongful impact on its intellectual property.

26 179) Late in the game, Genea promised to provide a claims infringement analysis, but
27 Genea ultimately failed to do so. Genea's actions as described above, including its broken
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promise to provide a claims infringement analysis, were malicious, deceitful, and oppressive in that they prevented Plaintiff from exercising their rights to use WSA and their products and technology without interference, thus entitling the Plaintiff to an award of punitive damages.

180) Genea, through their authorized agents Keith Voysey, Chief Technology Officer, David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D Letter, made or authorized the above-cited actions. The exact roles of these defendants are unknown, but when discovery is allowed to proceed, Plaintiff will amend this Complaint to be plead specific newly discovered fact. So far, discovery by Plaintiff has been unfairly stifled, while GENE A was granted permission to conduct an intrusive inspection of WSA.

181) The last of the series of actions by Genea cited above causing damages to Plaintiff occurred within three (3) years of the filing of this Complaint and damages continue to accrue. Plaintiff's claims for intentional misrepresentation and deceit under the UCL started to accrue when the last of the above-cited actions by GENE A causing damages to the Plaintiff occurred, *e.g.* GENE A's refusal to withdraw its C&D Letter in December 2013. This accrual occurs within four (4) years of the filing of this Complaint and within the statute of limitations for UCL claims.

182) As recited herein, GENE A's action were malicious, deceitful, and oppressive because GENE A did not perform a claims infringement analysis and then refused to provide information necessary to avoid willful infringement and wrongful impact, thereby directly and proximately causing Plaintiff to suffer damages from lost assets and lost or reduced business opportunities in a sum according to proof but exceeding the jurisdictional limits of this court.

COUNT 5 -- Fraudulent Misrepresentation Regarding Claims Of Patent Infringement And Wrongful Impact on GENE A's IP.

183) Plaintiff re-alleges and incorporates herein the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

1 184) Genea, through their authorized agents Keith Voysey, Chief Technology Officer,
2 David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D
3 Letter, represented that WSA infringed on Genea's '245 Patent and that Plaintiffs' products
4 and technology wrongfully impacted GENE's IP. Genea made the representations above
5 when it knew, or should have known, that they were false due to prior inspections of WSA in
6 2008 and through the internet about 2010. Genea also knew or should have known that WSA
7 did not infringe on Genea's '245 Patent because Plaintiff informed them that WSA did not
8 use user metered energy usage data.

9 185) The representations above were made by Genea's authorized agents with the intent to
10 fraudulently force the Plaintiff from the marketplace in which the parties compete and to
11 preclude the Plaintiff from using, further developing or having access to WSA and the
12 Plaintiff's products and technologies.

13 186) Even now, Genea refuses to withdraw these representations of patent infringement and
14 impact on Genea's intellectual property with the intention of harming Plaintiff's business
15 through creating doubt in the marketplace in which the parties compete as to whether WSA
16 may infringe on Genea's '245 Patent and whether Plaintiff's products and technology
17 wrongfully impact GENE's IP.

18 187) Even after covenanting not to sue in the federal litigation, Genea continues to benefit
19 from its allegations of patent infringement and wrongful impact on Genea's intellectual
20 property and oppress Plaintiff who still cannot fully use or further develop WSA because the
21 covenant to not sue does not specify the software process for which Genea will not sue.

22 188) As a direct and proximate result of sending its C&D Letter without including any
23 description of any infringing conduct, Genea knowingly, willfully, and wrongfully failed to
24 disclose facts relevant to determining if WSA infringed on Genea's '245 Patent and whether
25 the products and technology of Plaintiff wrongfully impacted Genea's intellectual property.

26 189) Genea's concealment of these material facts about the relationship between its own
27 technology and the products and technology of Plaintiff was malicious because it prevented
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1 the Plaintiffs from avoiding willful infringement and wrongful impact. Genea's non-
2 disclosure and concealment of these facts prevented Plaintiff from explaining to their
3 customers and clients that there was no infringement.

4 190) By failing to request or even conduct an inspection of the WSA platform before
5 sending its C&D Letter, Genea did not do everything reasonable to investigate its allegations
6 that WSA infringed on Genea's '245 Patent and that Plaintiff's products and technology
7 wrongfully impacted Genea's intellectual property. By failing to do everything reasonable
8 before demanding that the Plaintiff stop marketing and selling WSA, Genea acted recklessly
9 and oppressively against Plaintiff by forcing him to stop or reduce usage and development of
10 the WSA platform and related products and technology.

11 191) By failing to request any information from the Plaintiffs concerning the WSA
12 platform before sending its C&D Letter, Genea was willfully reckless in not evaluating
13 whether WSA infringed on Genea's '245 Patent and whether the Plaintiff's products and
14 technology wrongfully impacted Genea's intellectual property.

15 192) After sending the C & D Letter, Genea owed duties to Plaintiff to explain its
16 allegations of impact on GENE A's IP, which would have assisted Plaintiff to avoid further
17 wrongful impact, if any. GENE A also owed a duty to describe conduct infringing on Genea's
18 '245 Patent, which would have assisted Plaintiff in avoiding willful infringement, if any.

19 193) Genea violated and continues to violate these duties owed to Plaintiff by withholding
20 and concealing information which would have aided Plaintiff in avoiding wrongful impact on
21 GENE A's IP, if any, and avoiding willful infringement on the '245 Patent, if any.

22 194) Genea knew or should have known, based on its secret inspection of WSA in 2008 and
23 its internet inspection in 2010 that WSA did not wrongfully impact Genea's intellectual
24 property or infringe on Genea's '245 Patent. Before sending its C&D Letter, Genea had no
25 reasonable grounds for believing that WSA infringes on the '245 Patent or that the Plaintiffs'
26 products and technology wrongfully impacted GENE A's IP.
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1 195) Upon receiving a cease and desist letter, Plaintiff has a right to know the facts
2 underlying any allegation of impact on intellectual property or infringement on a patent of the
3 sender in order to prepare a response to a cease and desist letter. By refusing to explain its
4 allegations of impact or provide a description of impacting conduct or withdraw the C&D
5 Letter in December, 2013 after promising not to sue, Genea knew that such silence would
6 have a deleterious effect on Plaintiff's ability to further develop WSA and its business.

7 196) Despite promising not to sue for infringement on its '245 Patent for present versions of
8 WSA, Genea nonetheless maintains its C&D Letter and its threats to sue for impact on
9 GENE's IP and future versions of WSA. Refusing to withdraw said letter is done in
10 complete disregard of the rights of Plaintiff's to know the facts of any alleged impact on
11 Genea's intellectual property, since Plaintiff has no way of knowing how to further develop
12 WSA business without infringing on Genea's '245 Patent and other intellectual property.

13 197) Plaintiff has a right to compete in the markets in which the parties compete. By
14 sending its C&D Letter in June, 2011, Genea intended to force the Plaintiff from the
15 businesses and markets in which they compete. Genea knew or should have known that by
16 sending its C & D Letter and refusing to explain any infringing conduct, that Plaintiff would
17 withdraw from the markets in which the parties compete in order to avoid willful
18 infringement. By refusing to withdraw its C&D Letter in December, 2013, Genea intends to
19 continue to force Plaintiff from the businesses and markets in which the parties compete, and
20 as a result Genea unfairly interferes with the Plaintiff's right to compete.

21 198) With the threat of potentially ruinous willful infringement and in the absence of any
22 information on infringement from Genea, Plaintiff took a reasonable course of action and
23 justifiably relied to their detriment on Genea's representations by severely reducing and
24 eventually stopping use of WSA systems and equipment. Said course of action was
25 reasonable in order to eliminate the potential any finding of willful infringement on Genea's
26 '245 Patent and wrongful impact on Genea's intellectual property.
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1 199) As a direct and proximate result of receiving the C & D Letter from Genea and
2 Genea's refusal to provide any description of infringing conduct or wrongful impact on
3 Genea's intellectual property, Plaintiff reasonably relied on Genea's statements of
4 infringement on Genea's '245 Patent and wrongful impact on Genea's intellectual property
5 by reducing and/or stopping further development the WSA technology platform and business
6 in order to avoid willful infringement and further wrongful impact, if any.

7 200) Genea's allegations of impact on GENE's IP are false. Genea's promise to not sue
8 Plaintiff for infringement on the '245 Patent for present versions of WSA does not include
9 suits for impact on GENE's IP.

10 201) Genea's allegations of patent infringement are in fact false, as Genea admitted in its
11 covenant to not sue in the federal litigation.

12 202) Genea's refusal to withdraw its C&D Letter Genea's actions in maintaining it are
13 oppressive against Plaintiff because Genea intends to reduce and/or interfere with Plaintiff's
14 further development of WSA business by creating continuing doubt about infringement and
15 wrongful impact on Genea's intellectual property.

16 203) As a direct and proximate result of Genea's misrepresentation that WSA infringed on
17 Genea's '245 Patent and that Plaintiff's products and technology wrongfully impact
18 GENE's IP, Plaintiff has suffered damages from lost assets and lost or reduced business in a
19 sum according to proof but exceeding the jurisdictional limits of this court.

20 204) Genea, through their authorized agents Keith Voysey, Chief Technology Officer,
21 David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D
22 Letter, made or authorized the above-cited actions. The exact roles of these defendants are
23 unknown, but when discovery is allowed to proceed, Plaintiff will amend this Complaint to
24 be specific. So far, discovery by Plaintiff has been unfairly stifled, while GENE was
25 granted permission to conduct an intrusive inspection of WSA.
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1 205) Because Genea acted maliciously, willfully, and in knowing disregard of the rights of
2 Plaintiffs to be free of false accusations of wrongful impact on Genea's intellectual property
3 and infringement on the '245 Patent, Plaintiff is entitled to punitive damages.

4 206) The last of the above-cited actions of Genea giving rise to fraudulent
5 misrepresentation that caused damages to Plaintiff occurred within three (3) years of the filing
6 of this Complaint and damages continue to accrue. Plaintiff's claims for fraudulent
7 misrepresentation under the UCL started to accrue when the last of the above-cited actions by
8 GENE A causing damages to the Plaintiff occurred, *e.g.* GENE A's refusal to withdraw its
9 C&D Letter in December 2013. This accrual occurs within four (4) years of the filing of this
10 Complaint and within the statute of limitations for UCL claims.

11 207) As a direct and proximate result of Genea's concealment or non-disclosure of facts
12 that would have demonstrated that WSA did not infringe on Genea's '245 Patent, Plaintiff has
13 suffered damages from lost assets and lost or reduced business in a sum according to proof
14 but exceeding the jurisdictional limits of this court.

15 **COUNT 6 -- Intentional Interference With Prospective Economic**
16 **Advantage**

17 208) Plaintiff re-alleges and incorporates herein the allegations of the preceding paragraphs
18 of this Complaint as if fully set forth herein.

19 209) FULTON had an economic relationship with John Matter that would have resulted in
20 an economic benefit to Mr. Fulton. Genea knew of the economic relationships between John
21 Matter and Mark Fulton because GENE A addressed its C&D Letter to both FULTON and
22 the developer of WSA.

23 210) Genea intended to disrupt the economic relationships between John Matter and Mark
24 Fulton by sending its C&D Letter and thereafter refusing to provide any description of patent
25 infringing conduct and failing to explain any wrongful impact on GENE A's IP.

26 211) Genea engaged in wrongful conduct by sending its C&D Letter without first
27 performing a claims infringement analysis. Genea then wrongfully refused to provide any
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1 description of infringing conduct. Genea wrongfully refused to identify any products or
2 technology of Plaintiff that wrongfully impacted GENE A's IP. Genea wrongfully concealed
3 facts that WSA did not infringe on Genea's '245 Patent and that Plaintiff's products and
4 technology did not wrongfully impact GENE A's IP.

5 212) The actions by Genea disrupted the economic relationships between John Matter and
6 Mark Fulton by preventing Plaintiff from using and further developing the WSA technology
7 platform to generate business. The refusal of Genea to explain its allegations in its C&D
8 Letter prevented Plaintiff modifying his systems using WSA to avoid infringing on Genea's
9 '245 Patent, resulting in other customers and clients of Plaintiff FULTON from using and/or
10 buying WSA systems.

11 213) Genea intended to disrupt contractual and economic relations FULTON had with Mr.
12 Matter and other individuals and business entities by making representations alleging that
13 WSA infringed on Genea's '245 Patent and that Plaintiff's products and technology
14 wrongfully impacted GENE A's IP. By sending a cease and desist letter demanding that
15 Plaintiff "cease[] to market and sell WSA", GENE A intended to disrupt FULTON's
16 relationship with the developer of WSA and Plaintiffs clients. By sending its C&D Letter
17 without any description of infringing conduct, Genea intended to interfere with the economic
18 relationship between the Plaintiffs by forcing them to stop further development and use of
19 WSA, thereby eliminating Plaintiff as competition.

20 214) At the time of the actions of Genea as described herein, Plaintiff had prospective
21 economic relationships with other multiple individuals and businesses, including competitors.
22 Genea knew about these prospective economic relationships. Genea knew about the
23 contractual and prospective economic relationships Plaintiff had with other persons and
24 entities since the parties competed on the same bids and have a long history of competing
25 with each other.

26 215) Genea, by making public allegations against the Plaintiffs for patent infringement,
27 through sending the cease and desist letter demanding that the Plaintiffs cease to use any
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1 product or technology that impacts GENE A's IP, by failing to respond to the Plaintiff's
2 requests for clarification of infringement claims, and by failing to withdraw its C&D Letter
3 after admitting that the WSA technology platform did not infringe on Genea's '245 Patent,
4 did willfully and intentionally disrupt the prospective economic relationships Plaintiff had
5 with Mr. Matter and third parties.

6 216) As a direct and proximate result of the actions of Genea described herein, Plaintiff has
7 suffered actual disruption to its prospective economic relations with each other and with third
8 parties in a sum according to proof but exceeding the jurisdictional limits of this court.

9 217) Genea's failure to provide a description of infringing conduct or identify the products
10 and technology that wrongfully impacted Genea's intellectual property or infringed on its
11 '245 Patent was malicious because Genea intended to cause harm to Plaintiffs' business using
12 WSA. Genea's conduct was despicable because no reasonable person would deliberately
13 prevent another person from, if necessary, modifying their conduct or products to avoid
14 allegations of infringement and wrongful impact.

15 218) Genea's refusal to provide Plaintiff with infringement information was willful and in
16 knowing disregard of the rights of Plaintiff's to modify WSA to avoid willful infringement, if
17 any. Genea acted in knowing disregard of Plaintiff's right to receive a description of
18 infringing conduct in order to avoid future willful infringement, if any.

19 219) Genea's failure to disclose the facts supporting its allegations of wrongful impact on
20 its intellectual property and infringement on its '245 PATENT was malicious because Genea
21 withheld such information in knowing disregard of the dangerous consequences for Plaintiff
22 for being unable to avoid willful infringement. Genea's actions were despicable because
23 Genea inflicted cruel and unjust hardship on Plaintiff by preventing them from modifying
24 WSA to avoid willful infringement, if infringement occurred.

25 220) Genea's failure to include any description of infringing conduct in its C&D Letter, its
26 refusal to provide facts needed to determine whether infringement occurred, and its
27 maintenance of the threats in the C&D Letter after December, 2013 were and are oppressive
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1 because Genea intended to prevent or limit Plaintiff's ability to use WSA technology in its
2 current or future forms to compete with Genea.

3 221) Genea, through their authorized agents Keith Voysey, Chief Technology Officer,
4 David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D
5 Letter, made or authorized the above-cited actions. The exact roles of these defendants are
6 unknown, but when discovery is allowed to proceed, Plaintiff will amend this Complaint to
7 be specific.

8 222) As recited herein, Genea's malicious, deceitful, and oppressive actions in intentionally
9 preventing Plaintiff from exercising their rights to use and further develop the WSA platform
10 entitle Plaintiff to an award of punitive damages.

11 223) The last of the above-cited actions of Genea giving rise to intentional interference with
12 prospective economic relations and causing damages to Plaintiff occurred within three (3)
13 years of the filing of this Complaint. Damages continue to accrue. Plaintiff's claims for
14 intentional interference with prospective economic relations under the UCL started to accrue
15 when the last of the above-cited actions by GENE A causing damages to the Plaintiff
16 occurred, *e.g.* GENE A's refusal to withdraw its C&D Letter in December 2013. This accrual
17 occurs within four (4) years of the filing of this Complaint and within the statute of limitations
18 for UCL claims.
19

20 224) As recited herein, Genea's actions were and are malicious, deceitful, despicable, and
21 oppressive towards Plaintiff and were a direct and proximate cause of Plaintiff suffering
22 damages to the prospective economic relationships with third parties in a sum according to
23 proof but exceeding the jurisdictional limits of this court.

24 225) As a direct and proximate result of the actions of Genea as described herein, Plaintiff
25 suffered and continues to suffer actual disruption to its prospective economic relations with
26 other individuals and business entities in a sum according to proof but exceeding the
27 jurisdictional limits of this court
28

COUNT 7 -- Negligent Interference With Existing And Prospective Economic Relations

226) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

227) At the time of the actions of Genea as described herein, Plaintiff had economic relationships with the developer of WSA and with third parties.

228) Genea knew about these economic relationships. By way of a non-exhaustive example, GENE A addressed its C&D Letter to FULTON and John Matter, the developer of WSA.

229) At the time of the actions of Genea as described herein, Genea owed a duty to Plaintiff to investigate its own claims of wrongful impact on its technology and business before making representations and public accusations that the WSA technology platform violated Genea's intellectual property. Genea owed a duty to Plaintiff to investigate its own claims of infringement before sending its C & D Letter demanding that Plaintiff leave the market in which the parties were competing and to "cease[] to market and sell WSA".

230) Genea owed a duty to Plaintiff to respond to inquiries from Plaintiff regarding Genea's allegations of infringement of its intellectual property, so that Plaintiff could avoid future willful infringement, if infringement existed.

231) By failing to include a description of infringing conduct in its C & D Letter and failing to respond to Plaintiff's inquires, Genea failed in the above-mentioned duties.

232) By way of a non-exhaustive example, GENE A failed to adequately investigate its claims of infringement and wrongful impact by, *e.g.* by failing to request an inspection of a WSA, by failing to conduct an inspection of a WSA, and failing to request or obtain information on WSA from the Plaintiff. Genea failed to do everything reasonable that it could have done before sending its C & D Letter to avoid disrupting the economic relationships between Plaintiff and third parties.

1 233) Genea failed to provide any description of infringing or impacting conduct by WSA,
2 even though it had a duty to do so. Genea failed to adequately respond to Plaintiffs' request
3 for explanation of claims of infringement and wrongful impact on intellectual property.

4 234) Genea knew or should have known that its actions as described herein could cause the
5 Plaintiffs to reduce their business activity related to the WSA technology platform with each
6 other and to lose business with third parties as a direct and proximate result of Genea's
7 demand to Plaintiff to "cease[] to market and sell WSA".

8 235) Genea knew or should have known that its refusal to withdraw its C & D Letter would
9 continue to cause damage to the economic relationships between the Plaintiff and third
10 parties. Genea could have foreseen that its actions as described herein could and did cause
11 Plaintiff to stop selling and developing the WSA technology platform in order to avoid willful
12 infringement, if any.

13 236) Genea, by making public accusations against Plaintiff for patent infringement, by
14 sending the C & D Letter demanding that Plaintiff cease to use any technology that impacts
15 Genea's technology, by failing to adequately respond to the Plaintiff's inquiries regarding the
16 basis of claims of infringement, and by refusing to withdraw its C & D Letter after admitting
17 that there was no infringement in the federal litigation in order to prevent Plaintiff from
18 protecting themselves from willful infringement, violated one or more business duties
19 imposed by the laws of the State of California or the laws of the United States.

20 237) After demanding that Plaintiff cease to market or sell WSA, it was foreseeable that
21 Plaintiff would stop using, selling, and further developing the WSA technology platform,
22 thereby interfering with potential and existing economic relations between the Plaintiff and
23 other entities.

24 238) Genea, by failing to perform a claims infringement analysis before sending its C & D
25 Letter and by refusing to provide information to Plaintiff upon their request regarding a
26 description of infringing conduct, did negligently disrupt the contractual and prospective
27 economic relationships Plaintiff has or had with third parties.
28

1 239) Genea's actions as recited herein were a substantial factor in causing Plaintiff harm.

2 240) As a direct and proximate result of the actions of Genea as described herein, Plaintiff
3 has suffered, and continues to suffer after Genea's refusal to withdraw its C & D Letter,
4 damage to its contractual and prospective economic relations with third parties in a sum
5 according to proof but exceeding the jurisdictional limits of this court.

6 241) Genea's failure to provide a description of conduct that impacted its intellectual
7 property or infringed on its '245 Patent was malicious because Genea intended to prevent
8 Plaintiff from avoiding future willful infringement. Genea's failure to disclose the facts
9 supporting its allegations of wrongful impact on its intellectual property and infringement on
10 its '245 Patent were negligent because it knew or should have known that there was no
11 wrongful impact or infringement on Genea's intellectual property or patents.

12 242) Genea's above recited action were oppressive because Genea did these actions with
13 the intent of preventing Plaintiff from using WSA in its current or modified form to avoid
14 willful infringement and to continue competing with Genea.

15 243) Genea's actions as recited herein were despicable because no reasonable person would
16 deliberately prevent another person from, if necessary, modifying their conduct or products to
17 avoid allegations of infringement and wrongful impact. These actions were so malicious,
18 deceitful, and oppressive in preventing Plaintiff from exercising their rights to use and modify
19 WSA so as to entitle Plaintiff to an award of punitive damages.

20 244) Genea, through their authorized agents Keith Voysey, Chief Technology Officer,
21 David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D
22 Letter, made or authorized the above-cited actions. The exact roles of these defendants are
23 unknown, but when discovery is allowed to proceed, Plaintiff will amend this Complaint to
24 be specific.

25 245) The last of the above-cited actions of Genea giving rise to negligent interference with
26 economic relations causing damages to Plaintiff occurred within three (3) years of the filing
27 of this Complaint and damages continue to accrue. The last of the above-cited actions of
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Genea giving rise to negligent interference with economic relations occurred within three (3) years of the filing of this Complaint and damages continue to accrue. Plaintiff's claims for fraudulent misrepresentation under the UCL started to accrue when the last of the above-cited actions by GENE A causing damages to the Plaintiff occurred, *e.g.* GENE A's refusal to withdraw its C&D Letter in December 2013. This accrual occurs within four (4) years of the filing of this Complaint and within the statute of limitations for UCL claims.

246) As recited herein, Genea's actions were and are malicious, deceitful, despicable, and oppressive towards Plaintiff and were a direct and proximate cause of Plaintiff suffering damages to prospective economic relationships with third parties in a sum according to proof but exceeding the jurisdictional limits of this court.

247) As recited herein, Genea's actions were a substantial factor in causing harm to Plaintiff and were a direct and proximate cause of Plaintiff suffering damages to the prospective economic relationships with third parties in a sum according to proof but exceeding the jurisdictional limits of this court.

COUNT 8 --Unfair Competition Under California Business And Professions Code § 17200.

248) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

249) This cause of action is brought pursuant to Unfair Competition Law at **Business & Professions Code [BPC] § 17200 *et seq.*** Genea's conduct constitutes unfair, unlawful and/or fraudulent business practices within the meaning of **BPC § 17200.**

250) By way of a non-exhaustive example, GENE A sent a broadly cease and desist letter alleging infringement on a patent and other intellectual property but never identified in any way any infringing conduct. Sending such a threatening letter is unfair because GENE A thereby required Plaintiff to respond by conducting an investigation of infringement on his own, but then GENE A failed and refused to cooperate by providing any information on its

1 allegations of infringement. Members of the public are likely to be deceived into thinking
2 that GENE A IP is infringed because GENE A did not withdraw its C&D Letter.

3 251) Since GENE A was in the exclusive possession of infringement information, and
4 GENE A bore the burden of establishing infringement, GENE A's failure to conduct a claims
5 infringement analysis or to provide any information on infringement to Plaintiff caused
6 Plaintiff unnecessary harm and wasted effort. A reasonable jury could conclude that
7 GENE A's refusal to provide the results of a claims infringement analysis violated GENE A's
8 duties created by its C&D Letter and was unfair to Plaintiff.

9 252) In the final analysis, GENE A's refusal to provide any claims infringement analysis
10 deceived and continues to deceive members of the public since they could reasonably
11 conclude that GENE A's allegations of infringement are true. Members of the public are likely
12 to be deceived by GENE A's refusal to withdraw its C&D Letter, into thinking that there is
13 some basis for GENE A's allegations of infringement.

14 253) GENE A sent a cease and desist letter to the Plaintiff claiming that WSA and his
15 products infringed on Genea's 245 Patent and IP with no intention of suing Plaintiff for
16 infringement on its intellectual property or enforcing the '245 Patent. A reasonable jury could
17 conclude that sending a threatening cease and desist letter threatening litigation but then
18 failing to follow through by alleging infringement when given the opportunity is unfair and
19 fraudulent.

20 254) GENE A unlawfully abused the judicial process by waiting to issue its covenant to not
21 sue until the very last moment during the prior litigation. GENE A did not learn anything
22 during discovery in the First Federal Action that it did not already know from its SECRET
23 INSPECTION in 2008 and its INTERNET INSPECTION in 2010. A reasonable jury could
24 conclude that GENE A unfairly waited to issue its covenant to not sue.

25 255) GENE A violated duties to substantiate its claims of infringement by refusing to
26 respond to Plaintiffs' inquiries about the specifics of Genea's allegations that WSA infringed
27 on Genea's '245 Patent and Plaintiff's products infringed on GENE A's IP. GENE A violated
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1 its duty to fully inform Plaintiff of conduct that infringed on its '245 Patent. By wrongfully
2 refusing to provide infringement information in order to prevent Plaintiff from modifying
3 WSA to avoid willful infringement, GENE A acted unfairly.

4 256) Genea violated FRCP Rule 11 by sending its C&D Letter without first performing a
5 claims infringement analysis or performing only an inadequate infringement analysis.
6 GENE A could have, but did not, seek information or an inspection of WSA from the Plaintiff
7 or the developer of WSA. Thereafter, GENE A promised, but ultimately failed to provide,
8 Plaintiff with an explanation of its claims infringement. GENE A forced Plaintiff to file an
9 action for declaratory relief in federal court seeking a declaration that WSA did not infringe
10 on Genea's '245 Patent. A reasonable jury could infer from this conduct that GENE A abused
11 the judicial process by all along intending to issue a covenant to not sue, but unfairly waited
12 until the last minute.

13 257) Additionally, Genea violated the **FRCP** by sending its C&D Letter alleging
14 infringement, but then not including any counterclaims in its answer in the federal lawsuit
15 claiming that WSA infringed on Genea's '245 Patent.

16 258) GENE A's conduct constituted fraudulent concealment because GENE A concealed its
17 clandestine inspection of WSA in 2008 under false pretenses in order to make it appear that
18 Genea had no information about WSA.

19 259) GENE A's '245 Patent is invalid since GENE A violated the public policies of the
20 Patent Laws and the rules for applying for a patent. GENE A unlawfully failed to disclose
21 WSA as prior art in its patent application at the USPTO, yet contradicted itself by later
22 alleging infringement by WSA. GENE A's is unlawfully asserting its '245 Patent because it is
23 invalid because its claims are obvious in view of the teachings of WSA, in violation of 35
24 **U.S.C. 1 *et seq.***

25 260) After the federal litigation was completed, Genea refused to withdraw its C&D Letter
26 after admitting in the federal litigation that its claims of infringement were false. By
27 maintaining letter, GENE A unlawfully continues its false allegations of infringement that
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Genea knew or should have known were false. GENE A failed to disclose the basis of its original allegations of infringement in its C&D Letter in order to preclude Plaintiff from seeking modifications to the WSA to avoid willful infringement of Genea's '245 Patent and continuing to infringe on GENE A's IP. Members of the public who use or are familiar with building energy management systems are likely to be deceived as to the validity of GENE A's '245 Patent and GENE A's allegations that WSA infringes. A reasonable jury could conclude that GENE A's refusal to withdraw its C&D Letter unfairly stifles competition.

261) GENE A violated one or more duties imposed by the laws of the State of California and the United States by preventing the Plaintiffs from fulfilling their duties to avoid willful infringement by withholding infringement information.

262) The actions of Genea were subjectively in bad faith because Genea declined to seek to enforce its '245 Patent when given the opportunity in its answer in the federal litigation. By way of example, GENE A has never sought to enforce the '245 Patent through counter claims in its answer or even file an amended answer containing such counter-claims. Moreover, GENE A never sought to protect or enforce GENE A's IP.

263) The actions of Genea were objectively in bad faith because Genea did not have reasonable grounds to allege infringement since Genea failed to conduct a claims infringement analysis before sending its C&D Letter. GENE A had sufficient information from its SECRET INSPECTION of WSA in 2008 and its INTERNET INSPECTION in 2010 to know that WSA did not infringe on Genea's '245 Patent and that Plaintiffs products and technologies did not wrongfully impact GENE A's IP.

264) The above actions of Genea were oppressive and in bad faith because Genea made false allegations of infringement without any reasonable basis for alleging infringement on its '245 Patent and IP. By way of example, GENE A failed to respond to or acknowledge Plaintiff's counter-assertion that WSA could not infringe on Genea's '245 Patent since the claims in the '245 Patent were based upon using user metered energy usage data, which information WSA does not use.

1 265) The above actions of Genea were unlawful and fraudulent because they are based on
2 fraudulent misrepresentations which were made with the intent of interfering with the
3 economic relations between Plaintiff, the WSA developer, and third parties.

4 266) The above actions of Genea were unlawful and in violation of duties of patentees to
5 not make false or unsubstantiated allegations of patent infringement. Plaintiff was given no
6 information about Genea's allegations of patent infringement and wrongful impact on
7 GENE's IP. These allegations have not been withdrawn and continue to deter actual and
8 potential clients of Plaintiff from using and buying WSA systems. GENE's actions have
9 been unfair because Plaintiff was given no opportunity to demonstrate non-infringement due
10 to GENE's refusal to provide any claims infringement analysis. Members of the public who
11 are familiar with systems managing the energy use of buildings are likely to be deceived by
12 GENE's actions and non-actions.

13 267) The above-cited actions of Genea are oppressive because Plaintiff cannot further
14 develop WSA business to avoid infringing on Genea's 245 Patent because Genea never
15 provided any information on how current versions of WSA infringe on Genea's '245 Patent
16 or how Plaintiff's products or services infringed on GENE's IP. Yet Plaintiffs have had to
17 spend years and much expense in countering GENE's patent trolling tactics.

18 268) The above actions of Genea anti-competitive because Genea gained customers,
19 clients, and business which it would not have obtained without raising doubts about patent
20 infringement on the '245 Patent and wrongful impact on GENE's IP. Such anti-competitive
21 effects have not been ameliorated by Genea's covenant to not sue for patent infringement
22 because Genea failed to withdraw its C&D Letter which actual and future clients and
23 customers of Plaintiff can continue to rely upon and consider when deciding to not use WSA
24 systems.

25 269) There is no business justification for the above-cited actions of Genea because there is
26 no privilege for making false allegations in order to gain customers and market share. No
27 reasonable person could believe that GENE's allegations of infringement were true because
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1 GENE A has refused to provide any specific facts backing up its claims of patent infringement
2 and wrongful impact on GENE A's IP. No reasonable person could believe that GENE A's
3 '245 Patent is valid after it failed to cite WSA as prior art in its patent application but then
4 alleged infringement by WSA in its C&D Letter. Members of the public are likely to be
5 deceived as to the validity of the '245 Patent.

6 270) The above actions of Genea are not authorized by law. By way of example,
7 GENE A's actions are not protected by the litigation privilege since they never intended to sue
8 for infringement, and GENE A's actions are not protected by the First Amendment since
9 GENE A never described any conduct by Plaintiff that infringed on the '245 Patent or
10 GENE A's IP.

11 271) The above actions of Genea are not privileged because Genea had no intention of
12 enforcing Genea's '245 Patent and did not attempt to enforce this patent when given the
13 opportunity to allege patent infringement in counter-claims in its original answer in the
14 federal litigation. In addition, GENE A did not file an amended answer asserting counter-
15 claims for infringement.

16 272) A reasonable person would have discovered the factual basis of this UCL claim only
17 when GENE A issued its covenant-to-not-sue during December 2013, without however ever
18 providing a claims infringement analysis or demonstrating that it had conducted one before
19 sending the C&D Letter.

20 273) Plaintiff's claims for UCL started to accrue when the last of the above-cited actions by
21 GENE A causing damages to the Plaintiffs occurred, *e.g.* GENE A's refusal to withdraw its
22 C&D Letter in December 2013. This accrual occurs within four (4) years and within the
23 statute of limitations for UCL claims. Damages continue to accrue.

24 274) As a direct and proximate result of Genea's actions as described herein, the Plaintiff
25 suffered damages to its business reputation, intellectual property, and actual disruption to its
26 prospective economic relations with other individuals and business entities in a sum
27 according to proof but exceeding the jurisdictional limits of this court.
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COUNT 9 -- Trade Libel

275) Plaintiff re-alleges and incorporates herein the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

276) Genea owed a duty to competitors and the Plaintiff to not make false allegations of wrongful impact on GENEА's IP or infringement on its '245 Patent.

277) By way of a non-exhaustive example, GENEА intentionally made statements in its C&D Letter which it intended to be published and the heard by third parties. Genea knew or should have known that its allegations that Plaintiffs products and technology, including WSA, wrongfully impacted Genea's patents and intellectual property would be communicated broadly within the close-knit industry in which the parties compete.

278) Once Genea made allegations of infringement on its '245 Patent and wrongful impact on its intellectual property, Genea owed a duty to Plaintiff to identify such infringement and wrongful impact in order that Plaintiff could avoid further infringement and impact, if any. Genea violated these duties by withholding information regarding its allegations of patent infringement and wrongful impact on GENEА's IP.

279) Genea intentionally made false allegations which were eventually communicated to existing and potential customers of Plaintiffs that WSA infringed on Genea's '245 Patent and that Plaintiff's products and technology wrongfully impacted GENEА's IP. Actual and potential customers of Plaintiff then avoided using WSA systems because of outstanding allegations of patent infringement and wrongful impact on GENEА's IP.

280) Genea knew or should have known that its allegations were false since it had sufficient information from its SECRET INSPECTION in 2008 and its INTERNET INSPECTION in 2010 to conclude that WSA did not infringe on Genea's '245 Patent and that the Plaintiffs' products and technologies did not wrongfully impact GENEА's IP.

281) By failing to conduct a claims infringement analysis or seek information or an inspection from Plaintiff or WSA's developer before sending its C&D Letter, Genea recklessly disregarded the truth that there was no infringement and no wrongful impact on

1 GENE's IP. Genea acted despicably when it ignored Plaintiff's communication that WSA
2 could not possibly infringe on its '245 Patent since WSA did not use metered energy usage
3 data, a key component of the claims of the '245 Patent. No reasonable person would ignore
4 such clear evidence of non-infringement and then refuse to withdraw its C&D Letter.

5 282) Genea's allegations of patent infringement and wrongful impact on GENE's IP have
6 directly injured Plaintiffs in their profession, trade, and business and devalued the trademark
7 WSA since Plaintiff has lost sales and opportunities to further develop WSA as a result of
8 Genea's allegations. Genea's refusal to withdraw its C&D Letter continues to injure Plaintiff
9 in their profession, trade, and business and continue to devalue WSA systems because actual
10 and potential clients and customers do not want to become involved with systems using
11 WSA.

12 283) The actions of Genea as described herein resulted in publication of Genea's
13 allegations of wrongful impact on its intellectual property and infringement on its '245 Patent.
14 Many clients and customers of Plaintiff have become aware of and acted upon Genea's
15 allegations by stopping use of WSA systems and declining to use WSA equipment. Actual
16 and potential clients of Plaintiff continue to refuse or decline to use WSA systems because
17 Genea has refused to withdraw its C&D Letter.

18 284) Genea's allegations of infringement on its '245 Patent and wrongful impact on
19 GENE's IP, which arose out of its C&D Letter as well as other conduct cited herein, are in
20 fact false.

21 285) Genea's allegations of infringement were not privileged because Genea had no
22 intention to sue to enforce its '245 Patent or to sue for infringement of GENE's IP. By way
23 of a non-exhaustive example, GENE declined to assert patent infringement in any counter-
24 claims in its answer in the Federal Litigation and also failed to file an amended answer
25 containing counter-claims for patent infringement.

26 286) Genea's allegations of infringement, by natural consequence, caused damages to
27 Plaintiff and the reputation of WSA, business, and technology platform by encouraging actual
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1 and potential clients and customers of Plaintiffs to stop using WSA systems. Genea's refusal
2 to withdraw its C&D Letter continues causing these damages and is despicable because no
3 reasonable person would deliberately keep a cloud of infringement and wrongful impact
4 allegations alive after admitting that there was no infringement.

5 287) Genea knew or should have recognized that someone else, besides the Plaintiff, might
6 act in reliance upon Genea's allegations of patent infringement and wrongful impact on
7 GENE's IP.

8 288) The publication of Genea's false statements continues today whenever clients and
9 customers of Plaintiff learn about and rely upon Genea's claims of patent infringement and
10 wrongful impact on GENE's IP. Such publication occurs frequently today since customers
11 are reluctant to use WSA systems because of Genea's outstanding allegations of infringement
12 and wrongful impact on GENE's IP.

13 289) Plaintiffs discovered the falsity of Genea's statements within two (2) years of filing
14 this Complaint. A reasonable person would have learned about the falsity either when
15 GENE provided a claims infringement analysis, which it never did, or when GENE issued
16 a covenant to not sue, which however covered only allegations of infringement on the '245
17 Patent.

18 290) Genea's above-cited actions were a substantial factor in causing harm to Plaintiff
19 because without Genea's false statements staying alive, actual and potential clients and
20 customers of Plaintiff would continue to buy and use WSA systems. By way of a non-
21 exhaustive example, a customer of FULTON backed-out of a contract to buy and use WSA
22 systems.

23 291) Genea's above-cited actions were malicious because Genea acted with intent to cause
24 injury to Plaintiffs, *e.g.* by losing customers.

25 292) Genea's actions were despicable because no reasonable person would accuse someone
26 of infringing on a patent without performing a claims infringement analysis and then refuse to
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1 give the accused infringer any information on how to avoid further willful infringement, if
2 any.

3 293) Genea's actions were oppressive because Genea caused Plaintiff cruel and unjust
4 hardship as a result of not explaining its allegations of patent infringement and wrongful
5 impact on GENE A's IP.

6 294) Genea's actions were fraudulent because it misrepresented that WSA infringed on
7 Genea's '245 Patent and IP but then concealed information which Plaintiff could have used to
8 demonstrate non-infringement.

9 295) As a result, Plaintiffs are entitled to an award of punitive damages.

10 296) Genea, through their authorized agents Keith Voysey, Chief Technology Officer,
11 David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D
12 Letter, made or authorized the above-cited actions. The exact roles of these defendants are
13 unknown, but when discovery is allowed to proceed, Plaintiffs will amend this Complaint to
14 be specific.

15 297) The last of the above-cited actions of Genea giving rise to trade libel and causing
16 damages to Plaintiff occurred within two (2) years of the filing of this Complaint and
17 damages continue to accrue. Plaintiff's claims for trade libel under the UCL started to accrue
18 when the last of the above-cited actions by GENE A causing damages to the Plaintiffs
19 occurred, *e.g.* GENE A's refusal to withdraw its C&D Letter in December 2013. This accrual
20 occurs within four (4) years of the filing date of this Complaint and within the statute of
21 limitations for UCL claims.

22 298) As recited herein, Genea's actions were and are malicious, deceitful, despicable, and
23 oppressive towards Plaintiff and were a direct and proximate cause of Plaintiff suffering
24 damages in the trade in a sum according to proof but exceeding the jurisdictional limits of this
25 court, thereby entitling Plaintiff to punitive damages.

26 299) As recited herein, Genea's actions were a substantial factor in causing harm to the
27 Plaintiffs and were a direct and proximate cause of the Plaintiffs suffering suffer damages to
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1 the prospective economic relationships with third parties in a sum according to proof but
2 exceeding the jurisdictional limits of this court.

3 **COUNT 10 -- Business Defamation**

4 300) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this
5 Complaint as if fully set forth herein.

6 301) GENE A intentionally made public allegations to an industry trade group that WSA
7 infringed on its '245 Patent. By making such public statements, GENE A misrepresented the
8 nature, characteristics, qualities of Plaintiff's goods, services, and commercial activities.

9 302) By way of a non-exhaustive example, GENE A intentionally alleged in a C&D Letter
10 that WSA infringed on its '245 Patent and that Plaintiff's goods and services infringed on
11 GENE A's IP. By making such allegations to a competitor within a tightly-knit business
12 community, GENE A knew or should have known that its allegations of infringement would
13 reach ears beyond those of Plaintiff.

14 303) GENE A knew or should have known that said allegations and statements would
15 become public knowledge. Through said statements, GENE A misrepresented the nature,
16 characteristics, qualities of Plaintiff's goods, services, and commercial activities.

17 304) As a direct and proximate result of false allegations of infringement on the '245 Patent
18 and GENE A's IP, GENE A directly injured Plaintiff in his professions, trade, businesses, and
19 tarnished systems using WSA. By way of example only, actual and potential customers of
20 Plaintiff are now not willing to use WSA technology or they have withdrawn from
21 commitments to use or consider WSA.

22 305) By making public accusations against Plaintiff for patent infringement and through
23 sending the C&D Letter demanding that Plaintiff cease to use any technology that impacts
24 GENE A's IP, GENE A defame Plaintiff in his business. Then, by failing to adequately
25 respond to the Plaintiff's inquiries regarding Genea's claims of infringement, and by failing to
26 withdraw its C&D Letter after admitting in the Federal Litigation that its claims of
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1 infringement were false, GENE A continues to misrepresent the nature, characteristics,
2 qualities of Plaintiff's goods, services, and commercial activities.

3 306) The actions of GENE A as described herein resulted in publication of GENE A's false
4 allegations of infringement. By way of example, the allegations and statements made in the
5 C&D Letter became known within the relevant industry, resulting in several clients of
6 Plaintiff to refrain from using WSA systems.

7 307) Genea's allegations of infringement are defamatory of Plaintiff.

8 308) Genea's allegations of infringement are in fact false. However, Plaintiff could not
9 allege the falsity of GENE A's statements because Plaintiff had to first conduct an
10 investigation. By way of example, Plaintiff requested a claims infringement analysis from
11 GENE A, but GENE A never provided one. Plaintiff learned facts sufficient to allege
12 misrepresentation, at the earliest, only when GENE A covenanted to not sue for patent
13 infringement in December, 2013.

14 309) Genea's allegations of infringement were not privileged. By way of example,
15 GENE A owed a duty to Plaintiff to conduct a claims infringement analysis to support
16 GENE A's allegations of infringement and provide at least some of the results to Plaintiff, but
17 GENE A failed or refused to do so.

18 310) Genea's allegations of infringement, by natural consequence, caused and continue to
19 cause damages to Plaintiff's business and to the WSA technology platform and related
20 business.

21 311) Plaintiff suffered harm from the actions of Genea as cited above within the past three
22 (2) years from the filing date of this Complaint and the damages continue to accrue.
23 Plaintiff's claims for business defamation started to accrue when the last of the above-cited
24 actions by GENE A causing damages to the Plaintiffs occurred, *e.g.* GENE A's refusal to
25 withdraw its C&D Letter in December 2013. This accrual occurs within four (4) years of
26 filing this Complaint and within the statute of limitations for UCL claims. Damages continue
27 to accrue.
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1 312) As a direct and proximate result of Genea's actions as described herein, Plaintiff
2 suffered damages to its trademark, intellectual property, and actual disruption to its business
3 and prospective economic relations with individuals and business entities in a sum according
4 to proof but exceeding the jurisdictional limits of this court.

5 **COUNT 11 -- Declaratory Judgment of Non-Infringement on the '245**
6 **Patent.**

7 313) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this
8 Complaint as if fully set forth herein.

9 314) As a result of the unsettled state of affairs left by Genea's mere covenant to not sue for
10 present versions of WSA, Plaintiff continue to suffer business losses due to Genea's conduct.
11 By way of example, Plaintiff was not put as good a position as he was before GENE A sent its
12 C&D Letter.

13 315) An actual controversy arose and continues to exist between Plaintiff and Defendants
14 concerning their respective rights and duties in that Plaintiff contends that the Defendants'
15 covenant to not sue for present versions of WSA does not restore Plaintiff to as good a
16 position as he was before Defendants sent a cease and desist letter, whereas Defendants
17 dispute these contentions and contends that merely promising to not sue for infringement for
18 present versions of WSA is by itself not harmful to Plaintiff.

19 316) There is a real, immediate, substantial, and justiciable controversy between the
20 Plaintiff and Defendants concerning whether GENE A's refusal to withdraw its C&D Letter is
21 sufficient to dispel GENE A's previous unsubstantiated allegations of infringement and refusal
22 to provide a claims infringement analysis.

23 317) Plaintiff is unable to determine which conduct or products induced GENE A to make
24 allegations of infringement on its '245 Patent and GENE A's IP.

25 318) Plaintiffs desire a judicial determination of the rights and duties of the parties so that
26 Plaintiff may resume business as conducted before GENE A made unsubstantiated and
27 unwithdrawn allegations of infringement on GENE A's IP.
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319) Plaintiffs desire the following judicial declarations:

320) That WSA does not infringe on Genea's '245 Patent;

321) That future versions of WSA cannot infringe on Genea's '245 Patent;

322) That none of the products and technologies of the Plaintiffs wrongfully infringe on any of GENE A's IP;

323) That there are continuing financial burdens caused by Genea's C&D Letter and GENE A's refusal to withdraw it;

324) That the conduct of Genea prevented Plaintiff from using, selling, or further developing business and systems using WSA technology;

325) That the conduct of Genea was unfair, oppressive, and malicious.

326) That Genea's conduct interfered with the economic relations between the Plaintiff and third parties;

327) That Genea and the Plaintiff entered into an implied contract for the sale of FULTON's WSA business and associated systems to GENE A a fair market value;

328) That Genea's covenant to not sue does not eliminate the deleterious effects of Genea's allegations of patent infringement and wrongful impact on GENE A's IP.

329) That one or more of Genea's claims in its '245 Patent are invalid and unenforceable.

330) Other judicial declarations deemed necessary as this case progresses.

331) A judicial declaration is necessary and appropriate at this time under the circumstances in order that Plaintiff may ascertain their rights and duties, obtain compensation for WSA and associated businesses, and resume business as usual using WSA without allegations of infringement, if possible.

COUNT 12 -- Declaratory Judgment That the Claims of GENE A's '245 Patent Are Not Patentable Under 35 U.S.C. 101 Because They Contain Matter Not Eligible For Patent Protection.

234) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

235) In order for subject matter to be patentable, it must be eligible. By way of a non-exclusive example, the software methods of GENE A's '245 Patent are not eligible for patent protection because they contain well-known accounting ideas, mental processes, and abstract intellectual concepts.

236) An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties in that Plaintiff contends that GENE A's '245 Patent covers unpatentable software methods, whereas Defendants maintain the validity of the '245 Patent.

237) There is a real, immediate, substantial, and justiciable controversy between the Plaintiff and Defendants concerning whether the claims of Genea's '245 Patent include any new and useful process, machine, or manufacture which is patentable under 35 U.S.C. §101.

238) Plaintiff is entitled to a judicial declaration that one or more claims of Genea's '245 Patent constitute ineligible matter for patents.

239) Plaintiffs desire a judicial determination of the rights and duties of the parties regarding the eligibility of the claims of the '245 Patent for patentability.

240) A judicial declaration is necessary and appropriate at this time under the circumstances in order that Plaintiff may ascertain his rights and duties and eventually obtain compensation for losses due to GENE A's asserting an invalid patent.

COUNT 13 -- Declaratory Judgment That the Claims of GENE A's '245 Patent Are Not Patentable Under 35 U.S.C. 102 Because They Constitute Prior Art and Lack Novelty.

241) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

242) In order for a claimed invention to attain and keep the status of an issued patent, the claim must be novel. An invention is not novel if it is known within the prior art or if, to a person or ordinary skill and knowledge in the art, it is obvious.

243) By way of a non-exhaustive example, the WSA technology was known to GENE A while its application was pending at the USPTO. WSA is so similar to the claims of the '245

Patent that GENE A sent a C&D Letter alleging infringement without even requesting an opportunity to inspect from Plaintiff. A person of ordinary skill and knowledge in the art who knows of WSA would deem that the claims of the '245 Patent are obvious and lack novelty.

244) An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties in that Plaintiff contends that GENE A's '245 Patent covers an invention already in public use and used in WSA, including prior art known to GENE A at the time of its patent application, whereas Defendants maintain the validity of the '245 Patent and the novelty of its claims.

245) Plaintiff maintains that GENE A did not invent all of the claims of the '245 Patent because the functionality of the claims is covered by the functionality of WSA and other prior art, whereas GENE A maintains that it is the sole inventor or assignee from the sole inventor.

246) There is a real, immediate, substantial, and justiciable controversy between the Plaintiff and Defendants concerning whether the claims of Genea's '245 Patent include any new and useful process, machine, or manufacture which is patentable under 35 U.S.C. §102.

247) Plaintiff is entitled to a judicial declaration that one or more claims of Genea's '245 Patent constitute prior art and lack novelty.

248) Plaintiffs desire a judicial determination of the rights and duties of the parties regarding the eligibility of the claims of the '245 Patent for patentability.

249) A judicial declaration is necessary and appropriate at this time under the circumstances in order that Plaintiff may ascertain his rights and duties and obtain compensation for losses due to GENE A's asserting an invalid patent and resume business as usual using WSA.

COUNT 14 -- Declaratory Judgment That the Claims of GENE A's '245 Patent Are Not Patentable Under 35 U.S.C. 103 Because They Are Obvious.

250) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

1 251) In order for a claimed invention to attain and keep the status of an issued patent, the
2 claim must not be obvious to one possessing ordinary skill in the art, at the time the invention
3 was created.

4 252) By way of a non-exhaustive example, the WSA technology was known to GENE
5 while its application was pending at the USPTO. WSA is so similar to the claims of the '245
6 Patent that GENE sent a C&D Letter alleging infringement without even requesting an
7 opportunity to inspect from Plaintiff. WSA makes the claims of the '245 Patent obvious to
8 one of ordinary skill in the software arts.

9 253) An actual controversy has arisen and now exists between Plaintiff and Defendants
10 concerning their respective rights and duties in that Plaintiff contends that GENE's '245
11 Patent covers obvious subject matter which as a whole would have been obvious before the
12 effective filing dates of the claimed invention to a person having ordinary skill in the art,
13 whereas Defendants maintain the non-obviousness of the claims of the '245 Patent.

14 254) Plaintiff maintains that the claimed invention disclosed in the claims of the '245 Patent
15 was obvious given that GENE had already inspected WSA before or during GENE's
16 patent application at the USPTO, *i.e.* during its SECRET INSPECTION and INTERNET
17 INSPECTION.
18

19 255) The differences between WSA and other prior art and the claims of the '245 Patent are
20 such that the subject matter of the patent would have been obvious at the time of the invention
21 to a person having ordinary skill in the art. By way of illustration, if GENE knew of the
22 functionality of WSA through its two prior inspections and the information freely available on
23 the Internet, and that functionality infringed on GENE's '245 Patent, then obviously WSA
24 makes the claims of GENE's '245 Patent obvious.

25 256) There is a real, immediate, substantial, and justiciable controversy between the
26 Plaintiff and Defendants concerning whether the claims of Genea's '245 Patent are obvious
27 and patentable under 35 U.S.C. §103.
28

1 257) Plaintiff is entitled to a judicial declaration that one or more claims of Genea's '245
2 Patent are obvious in view of the prior art, including but not limited to WSA.

3 258) A judicial declaration is necessary and appropriate at this time under the circumstances
4 in order that Plaintiff may ascertain his rights and duties and eventually obtain compensation
5 for losses due to GENE A's asserting a patent covering obvious claims.

6 **COUNT 15 -- Declaratory Judgment That the Claims of GENE A's '245**
7 **Patent Contain Subject Matter That is Not Patentable Under 35 U.S.C.**
8 **112(a) Because of a Lack of Enablement.**

9 259) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this
10 Complaint as if fully set forth herein.

11 260) The Specification of a patent must describe how to make and use the claimed
12 invention. If the Specification does not describe how to make and use the invention, then the
13 claimed invention is not enabled and is thereby invalid.

14 261) By way of one non-exclusive example, the Specification for the '245 Patent does not
15 define the term or words user metered energy usage data. Yet the claims of the '245 Patent
16 use this term and these words. Hence, the '245 Patent is not enabled by the Specification.

17 262) An actual controversy has arisen and now exists between Plaintiff and Defendants
18 concerning their respective rights and duties in that Plaintiff contends that the specification of
19 GENE A's '245 does not describe how to make and use the claimed invention, whereas
20 Defendants maintain that the '245 Patent is enabled.

21 263) There is a real, immediate, substantial, and justiciable controversy between the
22 Plaintiff and Defendants concerning whether the claims of Genea's '245 Patent are enabled
23 under 35 U.S.C. §112(a). By way of example only, the '245 Patent uses phrases including
24 user metered energy usage data, but the specification lacks any definition of this or similar
25 term.

26 264) Plaintiff is entitled to a judicial declaration that one or more claims of Genea's '245
27 Patent is not enabled. By way of example only, Plaintiff inquired of John Guist whether the
28

1 specification included a definition of metered user energy usage data, and Mr. Guist replied
2 that such a definition was not necessary.

3 265) A judicial declaration is necessary and appropriate at this time under the circumstances
4 in order that Plaintiff may ascertain his rights and duties and eventually obtain compensation
5 for losses due to GENE A's asserting a patent which is invalid due to a lack of enablement.

6 **COUNT 16 -- Declaratory Judgment That the Claims of GENE A's '245**
7 **Patent Are Invalid and Unenforceable Due to GENE A's Failure to Disclose**
8 **WSA As Prior Art in its Application at the USPTO.**

9 266) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this
10 Complaint as if fully set forth herein.

11 267) Applicants for a patent have a duty to cite or inform the USPTO of all relevant prior
12 art while an application for a patent is pending. By way of one example, if a system infringes
13 on a claim of a patent, then it must necessarily be prior art.

14 268) GENE A knew about the WSA technology by 2008 at the latest through its SECRET
15 INSPECTION. GENE A learned further about WSA through its INTERNET INSPECTION
16 in or around 2010. GENE A knew or should have known about WSA since that product's
17 software and webpages are freely available on the Internet.

18 269) WSA is prior art to the claims of the '245 Patent because GENE A cited WSA as
19 infringing on GENE A's '245 Patent in its C&D Letter.

20 270) GENE A did not cite WSA as prior art in its application for the '245 Patent at the
21 USPTO. GENE A knew about WSA while its application was pending.

22 271) An actual controversy has arisen and now exists between Plaintiff and Defendants
23 concerning their respective rights and duties in that Plaintiff contends that GENE A committed
24 fraud on the USPTO by failing to disclose the WSA technology platform as prior art in its
25 application for the '245 Patent, whereas Defendants maintain that the WSA platform is not
26 prior art and that GENE A's '245 Patent is valid.

27 272) There is a real, immediate, substantial, and justiciable controversy between the
28 Plaintiff and Defendants concerning whether the claims of GENE A's '245 Patent are

1 anticipated by the WSA platform. There is a similarly urgent controversy over whether
2 GENE A was obligated to disclose WSA in its patent application.

3 273) Plaintiff is entitled to a judicial declaration that the WSA platform is prior art to the
4 '245 Patent and that GENE A was obligated to disclose or cite WSA as prior art in its patent
5 application. As result of failing to disclose relevant prior art which GENE A knew about,
6 GENE A's '245 Patent is invalid and unenforceable.

7 274) A judicial declaration is necessary and appropriate at this time under the circumstances
8 in order that Plaintiff may ascertain his rights and duties and eventually obtain compensation
9 for losses due to GENE A's asserting a patent which is invalid due to fraud on the USPTO.

10 **COUNT 17 -- Declaratory Judgment of Non-Infringement on GENE A's**
11 **Other Intellectual Property.**

12 280) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this
13 Complaint as if fully set forth herein.

14 281) An actual controversy has arisen and now exists between Plaintiffs and Defendants
15 concerning their respective rights and duties in that Plaintiffs contend that the Defendants'
16 covenant to not sue for present versions of WSA does not restore Plaintiff to as good a
17 position as they were in before Defendants sent a cease and desist letter to Plaintiff, whereas
18 Defendants dispute these contentions and contends that merely promising to not sue for
19 infringement on its '245 Patent does not alleviate GENE A's demands that FULTON cease
20 infringing on GENE A's other intellectual property.

21 282) There is a real, immediate, substantial, and justiciable controversy between the
22 Plaintiff and Defendants concerning whether FULTON infringes on any of GENE A's IP.

23 283) Plaintiff is entitled to a judicial declaration that FULTON does not infringe and has
24 not infringed on GENE A's IP so that he can resume business as usual.

25 284) A judicial declaration is necessary and appropriate at this time under the circumstances
26 in order that FULTON may ascertain his rights and duties and eventually obtain
27 compensation for loss of business related to using WSA and associated businesses.
28

285) As a result of the unsettled state of affairs left by Genea's mere covenant to not sue for present versions of WSA, FULTON continues to suffer business losses due to Genea's remaining allegations of infringement on GENE A's IP.

WHEREFORE, Plaintiff pray for judgment against Defendants, and each of them, as follows: For a declaration that Genea's failure to withdraw its C&D Letter is wrongful. For such other and further relief as the court deems proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- For compensatory damages as allowed by law;
- For punitive damages allowed by law;
- For restitution and/or disgorgement;
- That Genea be ordered to pay all costs and expenses associated with this action;
- That Genea be ordered to pay the attorneys' fees reasonably incurred by the Plaintiffs;
- That Genea be made pay damages to Plaintiff for conversion of their WSA platform valued at its highest fair market value;
- That Genea be made to pay damages for trespassing on Plaintiff's WSA systems under Plaintiff's control and business;
- That Genea be made pay damages to Plaintiff according to unjust enrichment and quantum meruit, in an amount according to proof;
- That a constructive trust be imposed on Genea for its ill-gotten gains;
- That Genea be made pay damages to Plaintiff for lost present and future business due to intentional and negligent interference with economic relations with third parties, in a sum according to proof;
- That Genea be made pay restitution for ill-gotten gains in a sum according to proof;
- That this is an exceptional case in favor of Plaintiffs and awarding attorneys' fees pursuant to 35 U.S.C. Section 285; and

- That additional orders and other relief be granted as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a jury trial on any and all claims triable by a jury.

Dated this January 8, 2016

By:

____/s/gregoryrichardsonesq____

Gregory Richardson, Esq.

LAW OFFICES OF GREGORY RICHARDSON